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THE
OFFICE of SHERIFF,
SHEWING ITS
HISTORY AND ANTIQUITY:

The Manner of appointing the High Sheriff, his Under Sheriff, and other Deputies; together with their respective Powers and Duties:—Particularly with Regard to the COUNTY-COURT, SESSIONS, CIRCUIT, ARRESTS on mesne Process, BAIL, JURIES, EXECUTIONS, ESCAPES, RESCUES and REPLEVINS.

TO WHICH ARE ADDED,

The Mode of electing CORONERS, and returning MEMBERS of PARLIAMENT: with many useful Precedents, of RETURNS TO WRITS, and Proceedings in the COUNTY-COURT, &c. calculated not only for the Benefit of Sheriffs, their Under Sheriffs and Deputies, but also for the Use of the Profession in General,

AND A

C O P I O U S I N D E X.

BY JOHN IMPEY,

Of the INNER TEMPLE;

Author of the New INSTRUCTOR CLERICALIS, in
the Courts of *King's Bench* and *Common Pleas*.

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OFFICE OF THE SECRETARY

HISTORY AND ANTIQUITY

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GOVERNMENT OF GREAT BRITAIN

BY JOHN IMPEY

PRINTED BY J. JOHNSON, ST. PAULS CHURCH-YARD

TO
THE HONOURABLE
FRANCIS BULLER, Esq
ONE OF HIS MAJESTY'S JUSTICES
OF THE COURT OF
KING'S BENCH,
THE FOLLOWING WORK IS
(BY HIS PERMISSION)
MOST RESPECTFULLY INSCRIBED

BY

HIS MOST OBEDIENT, AND
OBLIGED HUMBLE SERVANT,

THE AUTHOR.

P R E F A C E.

THE office of sheriff is undoubtedly an office of the highest importance in this country; its duties are of a *judicial* and *ministerial* nature. As a *judicial* officer, the sheriff has the administration of justice in the county-court; as a *ministerial* officer, he has the execution of all process, whether civil or criminal, original, mesne, or final. Besides which, it is his duty to preserve the peace; and for that purpose, he may raise the *posse comitatus*, and arrest felons, &c.—Hence, it is said, by Sir Edward Coke,* that “ he hath *triplicem custodiam*, viz. *vitæ justitiæ*, *vitæ legis*, & *vitæ reipublicæ*, &c. *vitæ justitiæ*, to serve process, and to return indifferent juries for the trials of mens’ lives, liberties, lands and goods; *vitæ legis*, to make execution, which is the life and fruit of the law; and *vitæ reipublicæ* principal conservator of the peace, within the county, which is the life of the common wealth, *vita reipublicæ pax*.” It must therefore be considered as a matter of con-

* Co. Lit. 168. Dalt. 5.

P R E F A C E.

cern that the authority and duty of the sheriff should be fully and accurately defined and understood.

The books that have hitherto been written upon this subject are few, and at this day imperfect. That of *Dalton* is certainly best : But if we consider, that more than a century has elapsed since its first publication, and in the mean time, the subject matter of it has undergone considerable alterations by reason of various acts of parliament, and judicial decisions, which in some instances have explained, but in more abridged, the power and duty of the sheriff, it must needs occur, that a performance of this kind, however perfect it might *originally* have been, will not afford a sufficient fund of *modern* information.

These considerations induced the author to undertake the following work ; wherein he has endeavoured, on the one hand, not to *omit* any thing that may be useful ; and on the other hand, not to *insert* any thing but what is vouched by the best authorities.

THE

THE
OFFICE
OF
SHERIFF.

Of the *Division of England into Counties.*

THE civil division of the territory of *England* is into counties, of those counties into hundreds, of those hundreds into tithings or towns. Which division as it now stands, seems to owe its original to king *Alfred*: who, to prevent the rapines and disorders which formerly prevailed in the realm, instituted tithings; so called, from the *Saxon*, because ten freeholders, with their families, composed one. These all dwelt together, and were sureties or free pledges to the king, for the good behaviour of each other, and if any offence was committed in their district, they were bound to have the offender forthcoming. *Flet.* 1. 47. And therefore antiently no man was suffered to abide in *England* above 40 days, unless he were inrolled in some tithing or decennary. *Mirr.* c. 1. §. 2. One of the principal inhabitants of the tithing is annually appointed to preside over the rest, being called the tithingman, the headborough, and in some counties the borsholder, or boroughs-

B ealder,

Civil division of *England* into counties, which owes its origin to *Alfred*,

who instituted tithings.

Tithingman the discreetest man in the town, &c.

- ealder, being supposed the discreetest man in the borough, town, or tithing. Finch. L. 8.
- Signification of tithings, &c.** *Tithings, towns, or vills*, are of the same signification in law, and are said to have had, each of them originally a church, and celebration of divine service, sacraments and burials. 1 *Inst.* 115. though that seems to be rather an ecclesiastical, than a civil distinction. The word *town* or *vill* is indeed, by the alteration of time and language, now become a general term, comprehending under it the several species of cities, boroughs, and common towns. A city is a town incorporated, which is or hath been the see of a bishop: and though the bishoprick be dissolved, as at *Westminster*, yet still it remaineth a city. *Co. Litt.* 109. A borough is now understood to be a town, either corporate or not, that sendeth burgesses to parliament. *Ibid.* 164. Other towns there are, to the number, *Sir Edward Coke* says, of 8803, which are neither cities nor boroughs. *Ibid.* 116. some of which have the privilege of markets, and others not; but both are equally towns in law. To several of these towns there are small appendages belonging, called *hamlets*; which are taken notice of in the stat. of *Exeter* 14 *Ed.* 1. which makes frequent mention of entire vills, demi-vills, and hamlets. Entire vills, *Sir Henry Spelman*, *Gloss.* 274. conjectures to have consisted of ten freemen, or frank pledges, demi-vills of five, and hamlets of less than five. These little collections of houses are sometimes under the same administration as the town itself, sometimes governed by separate officers; in which last case they are, to some purposes in law, looked upon as distinct townships. These towns, as was before hinted, contained each originally but one parish, and one tithing; though many of them now, by the increase of the inhabitants, are divided into several parishes and tithings, and sometimes, where there is but one parish, there are two or more vills or tithings.
- Town or vill, definition of.**
- Borough.**
- Hamlets.**
- Entire vills.**
- Demi-vills.**
- These towns contained but one parish, and one tithing, but now divided into several.

As ten families of freeholders made up a town or tithing, so ten tithings composed a superior division, called a hundred, as consisting of ten times ten families. The hundred is governed by an high constable or bailiff, and formerly there was regularly held in it the hundred court for the trial of causes, though now fallen into disuse. In some of the more northern counties these hundreds are called wapentakes. *Seld. in Fortesc. c. 24.*

Hundred what,

governed by a high constable.

Hundreds called wapentakes.

The subdivision of hundreds into tithings seems to be most peculiarly the invention of *Alfred*: the institution of hundreds themselves he rather introduced than invented; for they seem to have obtained in *Denmark*, *Seld. Tit. of Hon. 2, 3. 5*: and we find that in *France*, a regulation of this sort was made above two hundred years before; set on foot by *Clotharius* and *Childebert*, with a view of obliging each district to answer for the robberies committed in its own division. These divisions were, in that country, as well military as civil: and each contained a hundred freemen, who were subject to an officer called the *centenarius*, who in the middle age, was an officer that had the government or command, with the administration of justice, in a village, or division, containing an hundred freemen; a number of which *centenarii* were under the jurisdiction and command of a superior officer called the count, or *comes*. *Montespi. Laws. 30, 17.*

Subdivision of hundreds introduced by *Alfred*.

Centenarius was an officer who had the government of a village containing 100 freemen.

A number of which *centenarii* were under the command of the count.

An indefinite number of these hundreds make up a county or shire. *Shire* is a *Saxon* word signifying a division; but a county, *comitatus*, is plainly derived from *comes*, the count of the *Franks*; that is, the earl or alderman (as the *Saxons* called him) of the *shire*, to whom the government of it was intrusted. This he usually exercised by his deputy, still called in *Latin*, *vice-comes*, and in *English*, the sheriff, shrieve, or shire-reeve, signifying the officer of the shire; upon whom by process of time the civil administration of it is now totally devolved. In some counties there is an intermediate

An indefinite number of these hundreds make up a county or shire.

County derived from *comes* the count, the earl of the shire, to whom the government is intrusted, and is usually exercised by his deputy called the sheriff.

Lathes and rapes.

Where a county is divided into 3 jurisdictions, called trithings.

Trithings still subsist in county of York.

The number of counties.

Were divided for the better administration of justice, and sheriffs appointed yearly.

Counties Palatine 3.

Chief governors heretofore sent out all writs in their name.

Why privilege granted.

division, between the shires and the hundreds, as lathes in *Kent*, and rapes in *Sussex*, each of them containing about three or four hundreds a-piece—These had formerly their lath-reeves and rape-reeves, acting in subordination to the shire-reeve. Where a county is divided into three of those intermediate jurisdictions, they are called trithings. *Ll. of Ed. con. c. 34.* which were antiently governed by a trithing-reeve.—These trithings still subsist in the county of *York*, where, by an easy corruption they are denominated ridings; the north, the east, and the west riding. The number of counties in *England* and *Wales* have been different at different times: at present there are forty in *England*, and twelve in *Wales*. 5 Co. 109. b.

The reason why those counties were divided, seems to be for the better government, and more easy administration of justice, and for the better execution of the laws in the several counties, sheriffs are appointed; and by *Dalton*, there is no part of the kingdom that lieth not in some county. Of these 52 counties, there are 3 of special note, *Chester*, *Durham*, and *Lancaster*, which are therefore termed *counties palatine*. The former are such, by prescription, or immemorial custom; or at least as old as the *Norman conquest*. *Seld. Tit. Hon. 2, 5, 8.* the latter was created by king *Edward 3.* in favour of *Henry Plantagenet*, first earl and then duke of *Lancaster*. *Seld. ibid. 4 Inst. 204.*

The chief governors of these counties palatine, heretofore, by a special charter from the king, sent out all writs in their own names; and touching justice, did all things as absolutely as the king himself in other counties; only acknowledging him their superior and governor: whence palatine, a *palatio*, because the owners of them had *jura regalia* as fully as the king hath in his palace. These palatine privileges were probably granted to them, the counties of *Chester* and *Durham*, because they bordered on enemies counties, *Wales* and *Scotland*, in

in order that the owners being encouraged by so large an authority, might be the more watchful in its defence, and that the inhabitants having justice administered at home, might not be obliged to go out of the county, and leave it open to the enemies incursions; and upon this account also there were formerly two other counties palatine, *Pembroke* and *Hexham*, the latter was united with *Northumberland*, but these were abolished by parliament, the former in 27 H. 8. the latter in 14 Eliz. Likewise their power was much abridged, the reason for their continuance in a manner ceasing; though still all writs are witnessed in their names, and all forfeitures for treason by the common law, accrue to them. 4 Inst. 205. Of these three, the county of *Durham* is now the only one remaining in the hands of a subject. — 4 Inst. 205. 1 Vent. 155, 157.

Power abridged
by H. 8.

The *Isle of Ely* is not a county palatine, but only a royal franchise: the bishop having by grant of king *Henry the First*, *jura regalia*, within the *Isle of Ely*; whereby he exercises a jurisdiction over all causes, as well criminal as civil. 4 Inst. 220.

Isle of Ely royal
franchise.

There are also counties *corporate*; which are certain cities and towns, some with more, some with less territory annexed to them; to which out of special grace and favor the kings of *England* have granted to be counties of themselves, and not to be comprized in any other county; but to be governed by their own sheriffs, and other magistrates, so that no officers of the county at large have any power to intermeddle therein.—Such are *London*, *York*, *Bristol*, *Norwich*, *Coventry*, and many others, which will be shewn in another part of this book.

Counties corpora-
rate.

Of the *Name* and *Antiquity* of the *Sheriff*.

Name and antiquity.

IT appears from several authorities, that long before the time of the *Romans*, the sheriff was the deputy of the *consul*, and called *vice-consul*; they calling that *consulatum*, which we call *comitatus*. *Co. Lit.* 168. *Selden's Janus* 53, 73. *Mirr.* 9. 1 *Ro. Rep.* 237. And in the middle age we find the word *consul*, used for *comes*, *count*; and *pro-consul*, for *viscount*—When the earls left their custodies, then was the custodies of counties committed to *viscounts*, and they are thereupon called *vice-comites*, *quia vices comitis supplent*.

Bracton, lib. 1. c. 8. says, that as *comes* is derived from *comitatus*, so *consul* is derived from *consulendo*: and in the laws of *Edward the Confessor*, mention is made of *vice-comites*, and *vice-consules*.

Definition of the word sheriff.

The word *sheriff* or *shire-reve* is derived from two *Saxon* words *scire*, *province* or *shire*; or rather from *sciran*, to divide, and *gerefa*, *grave*, *Reve* or perfect, being denominated from the first division of the kingdom into counties. *Chamb. Dict.* title *sheriff*.

Definition by Lord Coke.

Lord Coke says, that *shereve* is a word compounded of two *Saxon* words, viz. *shire*, and *reve-shire*, *satrapia*, or *comitatus*, and comes of the *Saxon* verb, *shiram*, (i. e.) *partiri*, for that the whole realm is parted and divided into *shires*; and *reve*, is *perfectus* or *præpositus*; so as *shireve* is the *reve* of the *shire*, *perfectus satrapia*, *provincia*, or *comitatus*. And he is called *perfectus*, because he is the chief officer to the king, within the *shire*, for the words of his patent be, *commissimus vobis custodiam comitatus nostri de &c.* 1 *Inst.* 68. a

Dalton's definition cb. 1.

Mr. Dalton says, that the most eminent and supreme dignity from the Conquest until the 11th year of *Ed. 3.* was the *earl* or *countée*, being antiently

Of the Name, &c. of Sheriff.

ently of the blood royal, and taking their names *comites à comitatu*, or *comites nomen acceperunt à comitando*, quia principem comitarentur ad bella, publicaque negotia ejus lateri semper hærentes, or as some say, kings vouchsafed to call them *comites*, companions; for that both out of their love they will, and out of knowledge can, and out of courage (the true ground of antient nobility) dare to advise boldly and truly upon every occasion: and these were of antient time *præfecti seu præpositi comitatus*, the rulers or governors of *counties* or *shires*, under the king, for so imports the Saxon words *shire reve*, *id est*, *le reve*, *del shire*, which is as much as *præpositus comitatus*. And those earls had antiently committed to them from the king the charge and custody of the county, which the *sheriff* now hath. *Smith de repub. Anglo.* 59. *vid.* 9 *Coke* 49, and 97. *Dalt.* 1.

Speed. fo. 4, says, king *Ælfred* first dividing this kingdom into several counties (or shires) instituted a *præfect* or *lieutenant* in every of those counties, which then were called *custodes*, keepers, and afterwards *comites*, *earls*, who were to keep the county in obedience to the king, and to suppress the outrages of notorious robbers.

Mr. Justice Blackstone, in the 1st vol. of his commentary says, The sheriff is an officer of very great antiquity in this kingdom, his name being derived from two Saxon words *scipe* *gerefa*, the reeve, bailiff, or officer of the shire.

He is called in *Latin*, *vice-comes*, as being the deputy of the earl or *comes*; to whom the custody of the shire is said to have been committed at the first division of this kingdom into counties.—But the earls, in process of time, by reason of their high employments, and attendance on the king's person, not being able to transact the business of the county, were delivered of that burden. *Dalt. c.* 1. reserving to themselves the honor, but the labor was laid on the sheriff. So that now the sheriff does all the king's business in the county; and

Speed. his definition.

Blackstone's definition.

Called in *Latin* *vice-comes*.

Sheriff does all the business of the county.

Of the Name, &c. of Sheriff.

Bailiff to the
crown.

though he be still called *vice-comes*, yet he is entirely independant of, and not subject to the earl; the king by his letters patent committing *custodiam comitatus* to the sheriff, and him alone. He is considered in our books as bailiff to the crown, and his county in which he hath the care, and in which he is to execute the king's writs, is called his bailiwick. 7 Co. 33.

How originally chosen.

How chosen ori-
ginally.

SHERIFFS were originally chosen by the people in their *folk-mote* or county court. *Selden Tit. of Hon.* 610 and Lord Coke in his preface to 3 Rep. says, they were chosen the same as the coroner. 2 Inst 174. 558. In confirmation of which it was ordained, by stat. 28 Ed. 1. c. 28: "that the people should have election of their sheriff in every shire, where the shrievalty is not of fee, if they list." For anciently in some counties the sheriffs were hereditary, as in Scotland, till the 20G. 2. c. 43. and still continue in the county of *Westmoreland* to this day: the city of *London* having also the inheritance of the shrievalty of *Middlesex*, vested in their body by charter. 3 Rep. 72. The reason of these popular elections is assigned in the same stat. c. 10. "that the Commons might chuse such as would not be a burthen to them." And herein appears a strong trace of the democratical part of our constitution; in which form of government it is an indispensable requisite, that the people should chuse their own magistrates. *Mont. Sp. L.* b. 2. c. 2. This election was in all probability not absolutely vested in the Commons, but required the royal approbation. For in the Gothic constitution, the judges of their county courts (which office is executed by our sheriff) were elected by the people, but confirmed by the king: and the form of their election was thus managed; the people,

Gothic constitution, judges
elected by the
people.

ple, or *incolæ territorii*, chose *twelve electors*, and they nominated three persons *ex quibus rex unum confirmabat*. *Stiernh. de Jure Goth. l. 1. c. 3.* But

Election thus.

with us in *England*, these popular elections, growing tumultuous, were put an end to by stat. 9 *Ed.*

Popular elections were put an end to, and sheriffs were assigned by the chancellor, &c.

2. ft. 2. which enacted, "that the sheriffs should from thenceforth be assigned by the chancellor, treasurer, barons of the Exchequer, and by the justices, and in the absence of the chancellor, by the treasurer, barons, and justices," as being persons in whom the

same trust might with confidence be reposed. By statutes 14 *Ed.* 3. c. 7. 23 *H.* 6. c. 8. and 21 *H.* 8. c. 20. The chancellor, treasurer, president of the king's council, chief justices, and chief baron, are to make this election; and that on the morrow of All Souls, in the Exchequer. And the king's letters patent appointing the new sheriffs, used commonly to bear date the sixth day of November. stat. 12 *Ed.*

The chancellor, &c. to make election on the morrow of All Souls.

4. c. 1. The stat. of Cambridge, 12 *R.* 2. c. 2. ordains, "that the chancellor, treasurer, keeper of

Letters patent.

"the privy seal, steward of the king's house, the king's chamberlain, clerk of the rolls, the justices of the one bench and the other, barons of the exchequer, and all other that shall be called to ordain, name, or make justices of the peace, sheriffs, and other officers of the king, shall be sworn to act indifferently, and to name no man that sueth to be put in office, but such only, as they shall judge to be the best and most sufficient."

Chancellor, &c. to be sworn to act indifferently and to name such only as they shall judge best.

Since the time of *Henry the Sixth*, the custom hath been, and now is, "that all the judges, together with the other great officers, meet in the Exchequer chamber on the morrow of All Souls yearly, (which day is now altered to the morrow of St. Martin, by the last act for abbreviating Michaelmas term) and then and there propose three persons to the king, who afterwards appoints one of them to be the sheriff."

Custom of choosing since *H.* 6. and now.

24 *G.* 2. c. 48. s. 12.

The sheriffs in every of the shires of *Wales* shall be nominated yearly "by the lord president and council,

Sheriffs of *Wales* how appointed.

Sheriffs how chosen.

"council, and justices of Wales," who are to certify the names to the lords of the king's council, that the king may appoint. 34 & 35 H. 8. c. 26. f. 65.

Custom of proposing three persons borrowed from the Gothic constitution.

Founded upon some statute.

F. de laud. c. 24.

The king appointed a sheriff, which office he refused to take.

The judges opinion.

This custom of the *twelve judges* proposing *three persons*, seems borrowed from the Gothic constitution before mentioned; with this difference, that among the *Goths*, twelve nominors were first elected by the people themselves; which usage of ours was probably founded upon some statute, though not now to be found among our printed laws:—first, because it is materially different from the direction of all the statutes before mentioned; which it is hard to conceive that the judges would have countenanced by their concurrence, or that *Fortescue* would have inserted in his book, unless by the authority of some statute: and also, because a statute is expressly referred to in the record which *Sir Ed. Coke* tells us in 2 *Inst.* 559. he transcribed from the council book of 3d *March*, 34 H. 6. and which is in substance as follows. The king had of his own authority appointed a man sheriff of *Lincolnshire*, which office he refused to take upon him: whereupon the opinion of the judges were taken, what should be done in this behalf. And the two chief justices, *Fortescue* and *Prisot*, delivered the unanimous opinion of them all, "that the king did an error when he made a person sheriff, that was not chosen and presented to him according to the statute; that the person refusing was liable to no fine for disobedience, as if he had been one of the three persons chosen according to the tenor of the statute, or that some other thrifty man be intreated to occupy the office for this year; and that, the next year, to eschew such inconveniences, the order of the statute in this behalf made be observed." But notwithstanding this unanimous resolution, and the statute 34 & 35 H. 8. c. 26. f. 61. which expressly recognizes this to be the law of the land, some writers have affirmed, *Jenkins*, 229. that the king by his prerogative, may name whom he pleases to be sheriff, whether chosen by the judges or no.

This

Sheriffs how chosen.

11

This is grounded on a very particular case in the fifth year of queen *Elizabeth*, and reported in *Dyer* 225. when by reason of the plague, there was no *Michaelmas* term kept at *Westminster*; so that the judges could not meet there in *crastino animarum* to nominate the sheriffs: whereupon the queen named them herself, without such previous assembly, appointing for the most part, one of two remaining in the last year's list. And this case, is the only authority in our books for making these extraordinary sheriffs. The reporter adds, that it was held, "that the queen by her prerogative might make a sheriff without the election of the judges, none obstante aliquo statuto in contrarium," but the doctrine of *non obstante's*, which sets the prerogative above the laws, was effectually demolished by the bill of rights at the revolution, and abdicated *Westminster-hall*, when king *James* abdicated the kingdom. However, it must be acknowledged, that the practice of occasionally naming what are called *pocket sheriffs*, by the sole authority of the crown, hath uniformly continued to the reign of his present majesty, in which few, (if any) instances have occurred.

Queen appointed and when,

and held she might by her prerogative.

The practice of naming a pocket sheriff hath continued to this day.

It hath been adjudged, that the office of sheriff is an intire thing, therefore the king cannot apportion or divide it, (although he make or appoint one to be sheriff, *durante bene placito*) that is, he cannot determine it in part, as for one town, or one hundred; neither can he abridge the sheriff of any thing incident to or belonging to his office. *Davies*. 60. 4 Co. 33. *Dalt*. 6.

The office of sheriff cannot be apportioned or divided.

The office is intire, and so it must continue in that intirety for the whole county, without any fraction or diminution (except it be by an act of parliament, or that the king shall make some town &c. a county of itself, and shall appoint there a sheriff, and all things belonging to a sheriff within the same town, &c. *Dalt*).

It is intire, and so must continue except, &c.

Neither can the office of a sheriff be determined nor any part thereof, without and until a new sheriff

Cannot be determined, until a new sheriff be

be

made, except by death of the sheriff, not demise of the king.

be made for the execution and administration of justice, (except it be by his own death) for on the demise of the king, "*he may hold his office six months, unless sooner displaced by the successor.*" 1 Ann Stat. 1. c. 8. Nor does it determine by becoming a peer on his father's death. Cro. Eliz. 12. pl. 3. 25 Eliz. C. B. Sir Lewis Mordant's case.

Who are qualified or exempt from Serving.

No man shall be sheriff, except he have lands, &c. to answer the king, &c.

IT is provided by several acts of parliament, that no man shall be sheriff in any county, (*except he have sufficient lands within the same county where he shall be sheriff*), whereof to answer the king and his people, in case that any person shall complain against him; and that no one that is steward or bailiff to a great lord, shall be made sheriff, (except he be put forth of service.) 9. Ed. 2. 2 Ed. 3. c. 4. 4 Ed. 3. c. 9. 5. Ed. 3. c. 4. Dalt. 6.

No steward or bailiff of a great lord.

No man exempt, but by act of parliament or letters patent.

The king having an interest in every subject, and a right to his service, it is holden, that no man can be exempt from the office of sheriff, but by act of parliament or letters patent. Sav. 43. 9 Co. 46.

Who are exempt and who not.

A person excommunicated, was held to be no excuse, because he might have removed the disability, 2 Mod. 99. But a prisoner] for debt is not bound, 2 Mod. 305. If he be disabled by a judgment in law, he is excused, Salk. 108. 4 Mod. 273. *nam judicium redditur in invitum*; for though his fault or neglect was the occasion of such judgment, yet it is a mark set upon him by the government.

Attorney exempted.

It has been adjudged, that an attorney is exempted from the office of sheriff, by reason of his attendance on the courts of Westminster.

Militia officer excused.

By 2 Geo. 3. c. 20. "No person during the time,

"time he is acting as a militia officer, shall be obliged to serve the office of sheriff."

No person shall be placed or chosen in any office of mayor, &c. or other office of magistracy, place, trust, or employment, concerning the government of any city, corporation, borough, cinque port and their members, or other port town, that shall not have, *within one year next before such choice*, taken the sacrament according to the rites of the church of *England*: and every such person shall take the oaths of allegiance and supremacy at the time when the oath for the due execution of the office shall be administred. And in default, such choice shall be void, 13 Car. 2. st. 2. c. 1. s. 12.

Protestant dissenters who are exempted by the toleration act, 1 W. & M. stat. 1. c. 18. from the obligation of complying with the requisition of the corporation act, and who can plead their non-compliance as a reasonable and sufficient excuse, are not compellable to serve this office, nor of course to pay any fine for refusal, as will appear by the following case.

An action was brought in the sheriff's court, upon a by-law, for the penalty of 6000*l.* against the defendant *Allen Evans*, for refusing to serve the office of sheriff of *London*. The defendant pleaded this statute, that no person shall be chosen into such office, who shall not, within one year next before, have taken the sacrament according to the rites of the church of *England*; and in default thereof, every such choice is declared to be void. The defendant further pleads the statute of 1 W. c. 18. for exempting Protestant dissenters from penalties contained in former acts. Then the plea avers, that the sheriffs of *London* are officers, who before the 13 C. 2. were persons bearing such office; that the defendant was, and still is a protestant dissenter from the church of *England*, a person of scrupulous conscience in the exercise of religion, and during all that time, has, and still does frequent

None to be elected into an office who has not taken the sacrament within a year.

See 16 Geo. 2. c. 30 s. 3. time enlarged.

Protestant dissenters exempted by the toleration act, excused.

Action brought in sheriff's court for the penalty. Plea corporation act.

Exemption of the act.

Defendant, a protestant dissenter.

That he took
the oaths, &c.

That he had not
taken the sacra-
ment, nor can
in conscience do
it.

That the mayor,
&c. had no pow-
er to elect him.

Replication.

Demurrer and
judgment for
the plaintiff.

Writ of error.

frequent the congregations of religious worship amongst protestant dissenters. The defendant then states, that he took the oaths, and subscribed the declaration, according to the act of toleration, in the year 1751, at the sessions held for the county of *Middlesex*; and that his taking the oaths was duly registered in the court of sessions. That he had not, within one year before the supposed election, taken the sacrament of the Lord's supper according to the rites of the church of *England*, nor has he at any time since done it, nor can he in conscience take the same, nor was he bound to take the same since *May* 1751. That of these premises, the lord mayor, alderman, and citizens had notice; and that by reason thereof, and of the act of parliament made for governing corporations, the mayor, aldermen, and citizens assembled, in *July* 1745, and the livery were prohibited from electing, and had no power to elect him sheriff, that he was disabled from, and incapable of being elected; and that the supposed election of him was void. Plaintiff replied, that by the statute of the 5. G. 1. c. 6. s. 3. it is enacted, that no person chosen into such office shall be removed, or otherwise prosecuted, for omission of taking the sacrament, nor shall any incapacity or disability be incurred by reason of the same, (unless he be removed, or unless prosecution be commenced within six months.) To this replication, the defendant demurred, and the plaintiff joined in demurrer. And judgment was given for the plaintiff in the sheriff's court.

The defendant sued a writ of error, before the mayor and sheriffs, in the court of *Hustings*: and the judgment was there affirmed.

A writ of error of this judgment given in the *Hustings*, was brought before the commissioners of *Saint Martins le Grand*. The judges named in the commission were, the chief baron *Parker*, *Foster*, *Bathurst*, and *Wilmot*. The plaintiff in the original action pleaded, *in nullo est erratum*. The cause was argued

argued three several times by the most eminent counsel in the profession. The counsel for the defendant objected to the declaration, because the plaintiff had not stated therein, that the city of *London* had any right either by charter or prescription to elect the defendant sheriff: and the by-law being made to regulate this franchise; it ought to appear on the face of the declaration, that they are intitled to the franchise; which can only be by charter or prescription. But the judges, being unanimous in their opinion upon the real merits of this cause, declined giving any opinion upon this point, though they all seemed to think there was great weight in it.

Mr *Justice Foster* delivered his opinion to the following effect:---I shall found my opinion upon the toleration and corporation acts. I shall consider the corporation act, in the light of a prohibition to the electors. It was considered in that light in the case of the mayor of *Guilford* and *Clarke*. Notwithstanding, there were in that case exceptions to the declaration which were said to be fatal; yet, it appears by the report, that the court delivered their opinion in this manner: That the matter pleaded by the defendant was a good bar; that to make a default in the defendant, there must have been an election antecedent; and the election of such a one as the defendant is, is absolutely prohibited by the statute. Then I add, that since the corporation act is prohibitory to the electors, now they have wilfully, after notice, chosen the defendant, they have contravened that whole prohibition, and acted contrary to it; and I am of opinion, that the election is a mere nullity. The preamble to acts of parliament is the great window by which light is let in upon the sense of them. If you consider the preamble to the corporation act, it will appear, beyond a doubt, that the intention of the legislature in passing the corporation act, was to exclude protestant dissenters of all denominations from corporation offices.

The

Mr Justice Foster's opinion.

preamble.

The preamble of the act, after making short mention of the late troubles, says, "To the end that
 " the successions in such corporations may be
 " most probably perpetuated in the hands of per-
 " sons well affected to his majesty and the esta-
 " blished government; it being too well known,
 " notwithstanding all his majesty's endeavours,
 " and indulgence in pardoning what is past,
 " nevertheless many evil spirits are still working;
 " for prevention of the like mischief for the time
 " to come, and for the preservation of the public
 " peace both in church and state, be it enacted,"
 and so on. These were the motives upon which
 the legislature proceeded in making this act. The
 means they made use of to effect these ends were
 two, one regards the persons who were at that
 time in corporation offices; the other those who
 should come into such offices of trust for the future.
 The act in order to accomplish the great ends for
 which it was made, is very particular. "*No*
 "*person shall for ever hereafter be placed or chosen in or*
 "*to any the offices or places aforesaid, who shall not have*
 "*within one year next before such election taken the*
 "*sacrament of the Lord's supper, according to the*
 "*rites of the church of England.*" And then it
 goes on, and says, that "*every person so placed or*
 "*chosen shall take the oaths, and subscribe the decla-*
 "*ration, at the same time the oath of office is admini-*
 "*stered; and in default thereof, every such election is*
 "*declared to be void.*" This clause, as I take it,
 consists of two branches compleat, distinct and
 independent in their own nature. The first re-
 gards persons who have a right, and have power
 in possession; the second regards those who should
 be candidates, and be elected hereafter. The first
 is in my opinion prohibitory upon the electors.
 It lays a restraint upon them in the exercise of
 their power of electing. It confines them to per-
 sons, who conform to what is prescribed by the
 act. The words, as I read them, are, "*that no*
 "*person not previously qualified, shall be for ever*
 "*hereafter*"

"*hereafter elected.*" What is that, but saying, that no person, having power to elect, shall elect any person not previously qualified as the act directs; I cannot make out any difference between the two terms, that the election shall be void, and that they shall not elect such persons. The second branch of this clause, regards only the condition of the candidate. It goes upon a supposition, that a candidate may be eligible, and actually elected into the office; and upon that supposition, it requires a form to be gone through by him, and in default thereof, his election is declared to be void. I do not found my opinion upon this branch of the statute, but upon the other; which, I take it, prohibits the election of a person not duly qualified. As to the words in the second branch, "That in default thereof, the election shall be void." I think, that according to true grammar, and the strict meaning of the words, it means plainly this, in default of those things being done, that are required to be done by a candidate after his election, and not in default of that which this act no way requires. The corporation act does not require from any person who is a candidate for a corporation office, that he shall take the sacrament: he is under another obligation to conform to the established church. And though I admit, that the rubric did formerly enjoin conformity to the established church; yet in construction of these words, "*in default thereof, the election to be void;*" we must confine ourselves to those duties which this act alone requires. We must do so in common grammar and construction. There is no running into the other branch of the clause, in order to construe this. If then the act is prohibitory upon the electors, the consequence will be, that if they, having due notice of the incapacity of the candidate, proceed, notwithstanding to the election of a person declared by the statute to be not eligible;

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the

Sheriffs how chosen.

the whole proceeding will be a mere nullity, in contravention of the prohibition to the electors, wilful, open, and undisguised. A right of action cannot accrue to the corporation from such an improper proceeding, contrary to the statute, prohibited by the statute, and consequently null and void from the beginning. Thus, it stands with regard to the corporation. As to the defendant, he is now called upon under a penalty, to usurp an office upon the crown; which usurpation will subject him to a criminal prosecution and all its consequences. A strange dilemma this, To be obliged to usurp upon the crown, or forfeit the penalty of the by-law. Can the by-law purge the usurpation? A by-law cannot purge or excuse an usurpation. It would be absurd then to say, it can oblige a man to usurp. It has been said, that all corporations have a right to the service of their members. All corporations under proper limitations, certainly have this right. But still it is a right subject to the controul of the legislature. And in matters of election, they must submit to such regulations as the state shall think fit to make. It is asked, Shall persons who live in open contempt of all government in a state, shelter themselves under this act? That was said in *Larwood's* case; and it has been thrown out in this case, not very decently. It is sufficient at this time to say, that the case of debauchees and infidels was not in the contemplation of the legislature at the time this act was made. Consequently, this act cannot extend to them. The act was plainly levelled at persons of quite a different character. It was not levelled at atheists or infidels but protestant dissenters. Besides, the defendant does not endeavour to shelter himself under the idle excuse which the objection puts him to, of being an atheist, debauchee, or an infidel. But the defendant, as he pleads the toleration act, avers that he does not live in open disobedience to the ordinances of the church, although he has taken some scruples in
regard

regard to the mode of administration in the established church: he is real and sincere in his scruples, and lives in obedience to the ordinances of the church.—A distinction has been made in the argument, between the acts and proceedings being void in themselves, and only voidable. The answer I give to that is, that the point now in question will not turn, nor do I put it upon that branch of the clause which declares the election void, but upon that which absolutely prohibits the election, and consequently renders it a mere nullity. It has been said that the construction now contended for is partial to dissenters, in excusing them from offices of burden. I say, yes, it is; and it therefore excludes them from all corporation offices, which are attended with profit and honour. It would be absurd to say, that the same law that exempts them from the one, as persons unworthy of a public trust, has still left them liable to the other offices, be the trust that attends the office what it may. The trust attending the office of Sheriff of the city of *London* is a high trust. Therefore if protestant dissenters are excluded from offices attended with profit, merely as persons not worthy of a public trust; it would be odd to say, that they shall be obliged to serve the office of sheriff, which, is not only an office of honour, but likewise an office of very high trust. It was said in *Larwood's* case, and I believe it had weight, that no man can by his own plea disable himself, nor excuse one default by another. It is sufficient now to say, that *Larwood's* case was totally and substantially different from the present. He had not properly pleaded to the toleration act, and therefore could take no advantage of it. The present defendant has pleaded it properly and shewn himself not eligible. The defendant does not plead the toleration act and disability, to excuse one offence by another; but to shew, although the rubrick did require a conformity in all things, as to receive the sacrament in the church three

times a year, and the like, yet now his complying with the rubric is not to be imputed to him as a crime ; that the same act which hath taken away the offence, hath taken away the guilt ; and that he is guilty of no offence, in not complying with that which does not bind him ; that by the toleration act the rubric is taken out of the way of defendant, and does not extend to his case. There are particular branches of the act, from which this intent may be collected ; but I am clearly of this opinion, from the whole spirit and frame of it. The act of toleration is not to be considered merely as an act of connivance and exemption from former laws. It was made, that the public worship of dissenters might be legal, and that they might be intitled to public protection. Upon different occasions in the act, the religious worship of the dissenters is spoken of, as a mode of worship tolerated by the act. This clearly shews, that the mode of worship among the dissenters is legal and authorised by law. There were former laws obliging persons to resort to different churches to be attendant on divine service ; and dissenters are now obliged to the same in their way of worship. Persons contemptuously disturbing the public worship of protestant dissenters, are liable to the same penalties with those who disturb the worship in parish churches or chapels. As to persons acting as preachers in dissenting congregations ; they are exempted from serving upon juries, and from public offices, as fully as those of the established church are by the common law. Upon the whole, the corporation act being prohibitory upon the electors, every election contrary to it is a mere nullity ; and the toleration act having dispensed with the conformity of the defendant in this particular ; the judgment ought to be reversed.

Mr. J. Wilmot.

Mr. Justice Wilmot : The great question in this cause is, whether the plaintiff in the original action, under all the circumstances disclosed by the pleadings

pleadings is intitled to recover this sum of 600*l*. imposed upon the defendant, for refusing to comply with that part of the by-law stated in the declaration which directs that, "*every person elected into the office of sheriff shall appear before the lord mayor and aldermen, and become bound in a bond for taking the oath of office on the vigil of Saint Michael.*" I am of opinion, the plaintiff is not intitled to recover in this action; and that the judgments which have been given in this cause ought to be reversed. Several positions have been laid down, by the counsel who argued in this case, that are clear and indisputable. First, it is clear, that of common right a power is inherent in every corporation, to call upon their members for the performance of all corporate duties. Secondly, that the execution of all corporation offices is one of the duties. Thirdly, that a power of making by-laws, is incident to every corporation. Fourthly, that a by law imposing a fine for the refusal of a corporation office, is good. It is equally clear, that the right which every corporation has of calling upon their members to execute corporation offices may be abridged by themselves, or by the general laws of the land. The true question is, whether this right has not been abridged in the present case, and what will be the legal consequences of such abridgment. The unhappy situation the royal family and nation had been in before the restoration, made the legislature willing to guard against a relapse; and therefore they thought it necessary to regulate the corporations in an arbitrary way, by removing some officers, and placing others in their room who are better affected, and also by providing officers for the future. The method they took was, by vesting a power in commissioners (as we find in the former part of the act), to turn out whom they pleased, and place others in their offices. Of these they did not require any sacramental qualifications; because while the extraordinary power subsisted, there was

Sheriffs how chosen.

another check or controul. But when that commission expired, they did not then choose to rest upon oaths and declarations; but measured the fitness of men by their antecedent religious habit; and made the having received the sacrament, according to the rites of the church of *England*, the criterion by which that fitness was to be determined. They did not propose it as a test, to be given at, or after, his election; because they thought that the charms of power in possession, might make sudden conversions, which might not always be sincere. The intent of the legislature is expressed in the strongest terms, to effectuate such an intention. "*Provided, that (after the expiration of the commissions) no person shall for ever hereafter be placed, elected or chosen in, or to any of the offices or places aforesaid, that shall not have, within one year next before, taken the sacrament,*" and so on. "*And in default hereof every such election is hereby declared to be void.*" Now this clause is not addressed to the party elected, but to the electors. The prohibition is laid most clearly upon the persons who had a right to elect. It is the voice of the legislature, commanding them not to elect such persons. An election, contrary to that prohibition, is a transgression; and in this case it was a wilful transgression, because they had notice that *Evans* was one of those persons; if wilful, then a moral wrong, which can never lay a foundation for an action in a court of justice. Courts of justice are to enforce the will of the society. Laws manifest that will. And it is the duty of courts of justice to carry these laws into execution; but they are not to sustain actions, for doing what the society has forbid. The injunction not to elect, extinguishes the right to elect. The act does not make the office, but the election, void. The election in the present case is an infraction of the law: and right cannot spring out of wrong. If an act of parliament was to be made, with a clause, that all unmarried
men

men should be incapable of being elected ; this would work a release of the original contract, as to such persons. A valid election is a condition, precedent to the right which the corporation has to command, and to the obligation on the members to obey. It has been said, that this act was not made to ease dissenters, but to punish them ; and that an exemption from burthensome offices will be an ease ; that the office of sheriff being one of those, it will be giving the act an effect which the legislature did not intend, that it is more agreeable to the intention of the legislature, to construe the office void as to the person elected, and good as to the corporation, who are punishing as for a contumacy. This is the substantial part of the argument. Many cases have been cited, where acts have been deemed good to a certain degree, and void as to all others. But there never was, and it is impossible there ever should be, a case, where the word void was construed in such a manner, as to make the act void as to a person who broke the law, and good as to the persons who concurred in breaking it. The only point the legislature had in view, was, to secure the power to persons who outwardly professed the religion of the state : the punishment of non-conformists, by excluding them from power, was the consequence, not the end, of the law. We, as judges, ought to expound the law with the same spirit it was made ; and therefore ought not to construe it as a vindictive law, for any purpose but its own end. Whether this case occurred to the legislature, or how they thought it should be determined, does not appear. Different men may make different conjectures. But arbitrary conjectures never ought to be the basis of judicial determinations. If it had occurred, and they had intended to have made any difference between burthensome and lucrative offices, they would have taken notice of it. The construction now must be the same. Suppose it had been the office of chamberlain, and

the question put to the legislature; the answer must have been, we intend to keep non-conformists out of power, and therefore we command corporations not to elect them. They cannot be exposed to a penalty for not executing an office to which they cannot be elected; the exemption from both makes it equal. As to what is said, that persons may be qualified for a lucrative, and not for a burthensome office; I do not see how such a case can exist. For if they are qualified to accept a lucrative office, they are qualified to bear a burthensome one. It shews that it was only a mockery in them; but it does not prove, that the scruples of other dissenters are imaginary. It would be as unjust to judge of the scruples of all the dissenters, by the conduct of some; as to judge of the doctrines of the established church, by the lives of some of those who profess it. It has been urged, that a man shall not be permitted to excuse himself, on account of a disability occasioned by his own default; that it is an aggravation of his offence, to excuse one crime by another; and that the toleration act did not mean to exempt dissenters from relative duties. Instances have been mentioned of persons out of their senses, who are not allowed to disable themselves; if so, when the incapacity arises from natural disability, *a fortiori* in the case of a disability arising from neglect. First, I deny the rule, in *Skin. 576. Fitzherbert* was of a different opinion. It may seem hard, that a man shall avoid his own acts for duress of man, and not for a visitation from heaven. But the reason is, that the law has directed a mode of enquiry, and the king is to take mad men under his immediate protection, and after office found to avoid such acts as he thinks proper. *5 Mod. 421.* Madmen cannot be chosen into corporation offices. *In Eq. Ca. Abr. 279.* Lord King has drawn a rational line, between the acts done by an insane person to the prejudice of others, and the acts done by him to the prejudice of
of

himself. *King and Larwood* is no authority in the present case ; because it is clear that the toleration act was not pleaded, and it was only the opinion of two judges against Sir *Samuel Eyre*. In *Mod.* 271. Lord *Somers* is said to have been of the same opinion as Sir *Samuel Eyre*. The fine was only five marks, which shews the judges thought it a tender case. I observe, it was admitted in that case, that if a man be disabled by judgment to bear an office, there he is excused, because *judicium redditur in invitum*. Why then shall not an act of parliament excuse, which is the judgment of the whole legislature. As to Sir *John Read's* case, which was mentioned, it was an information in the exchequer 28 Nov. 26 Car. 2. He was appointed sheriff of *Hertfordshire*, was sworn, and took upon himself the execution of the office. A case very different from this ; for he was capable of the office at the time he was appointed, and had been in possession. In the present case the defendant was not eligible. Sir *John Read* alledged a disability which it was in his power to remove, and which it was his duty to remove. But here the defendant's receiving the sacrament must be precedent ; and since the toleration act, it is not his duty to receive it. *Box and Woollaston*, another case cited, turned upon the informality in the plaintiff's replication. Had it been determined on the point it is now produced to prove, it would certainly have been mentioned by chief justice *Holt* and *Eyre*, as a case in favour of their opinions. The case in 3 *Lew.* 116. differs as much from the present case, as between legally and illegally elected. I am therefore clearly of opinion that the judgment ought to be reversed.

The other two judges delivered their opinions to the like effect. And the judgment was reversed.

Afterwards, a writ of error was brought in parliament, and on hearing counsel, the judges were directed to deliver their opinions on the following

Error brought and judgment of the commissioners delegate affirmed.

lowing question; whether upon the facts admitted by the pleadings, the defendant is at liberty, or should be allowed to object to the validity of his election, on account of his not having taken the sacrament, according to the rites of the church of *England*, within a year before, in bar of this action. And the judges having taken a week's time to consider, and differing in their opinions, delivered them *seriatim*, with their reasons. Mr. justice *Hewit*, *Aston*, *Gould*, Mr. baron *Adams*, Mr. baron *Smythe*, and Mr. justice *Clive*, were of opinion in the affirmative, and Mr. baron *Perrot* in the negative: Whereupon it was ordered and adjudged, that the judgment given by the commissioners delegates, should be affirmed; and the record remitted. Sir *Thomas Harrison*, knight, chamberlain of the city of *London*, against *Evans*, *Brown's*, *Parl. Ca.* 181.

Refusant disabled.

It is said, that by statute 3 *Jac.* 1. every recusant is disabled; he may conform, but is not bound to it; for if he submits to the penalty, it is as much as is required by law. 2 *Mod.* 305.

By law of London held good, no freeman chosen sheriff, shall be excused, unless he is not worth 10,000.

And as nothing but an invincible necessity can exempt a person from serving the office of sheriff; on this foundation, a by-law made in *London*, that no freeman chosen sheriff, &c. shall be excused, unless he voluntarily swears, he is not worth 10,000 *l.* &c. And if he openly refuse to take the office, then to forfeit the sum of 400 *l.* &c. was adjudged good. *Salk.* 42. 5 *Mod.* 438. *City of London v. Vanacre.* *Carth.* 480.

Altered now to 15,000 *l.*

This sum of 10,000 *l.* is now altered by an act of common council, 7 *April* 1748, in the mayoralty of Sir *Robert Ladbroke*, knight, to 15,000 *l.* in lands, goods, and separate debts, &c.

Sheriffs

Sheriffs of London, &c.

BEFORE I proceed further, it may not be improper to take notice of the sheriffs of London, who hold the shrievalty of *Middlesex*, granted to the citizens of *London* by charter, of *H. 1.* at 300 *l. per annum*, and confirmed to them by king *John*, with all customs belonging, within the city and without, paying 300 *l. per annum*, at the *Easter* and *Michaelmas* exchequer. *Privil. of London, 5.*

Grant of the shrievalty of London and Middlesex.

London is a county of itself, 4 *Inst.* 248. and so long as this city hath been a county of itself, so long there have been sheriffs; for it cannot be a county without sheriffs.

London a county

By an act of common council, dated 7th *April*, 1740, "Intituled, an act for repealing all former acts, orders and ordinances, touching the nomination and election of sheriffs of the city of *London* and county of *Middlesex*; and for regulating and enforcing such nominations and elections for the future," reciting, that from time immemorial, there have been, and of right ought to be, two sheriffs of this city, which said two sheriffs, during all the time aforesaid, have constituted, and of right ought to constitute, one sheriff of the county of *Middlesex*. That the sheriffwick of this city, and the sheriffwick of the said county of *Middlesex*, from time immemorial belonged, and do of right belong, to the mayor and commonalty and citizens of the city of *London*. That the several acts, orders and ordinances heretofore made and passed in this city, touching the choice or election of persons to the offices of sheriffalty of this city and county of *Middlesex*; and for compelling the persons so chosen or elected, to accept and serve the said offices, have hitherto proved ineffectual to answer the several purposes in and by such acts, orders,

Act of common council relating to elections of sheriffs of London.

Sheriffwicks of the city of London and Middlesex, have belonged to the mayor, &c.

Acts and ordinances proved ineffectual.

Former acts re-
pealed.

Who to elect
sheriffs, and
when to be the
general election
day.

In what instan-
ces elections to
be on other days.

When persons
elected are to
take, and how
long to hold the
office.

orders, and ordinances, expressed or intended. For remedy thereof, be it enacted, and it is hereby enacted and ordained, by the *right honourable* the lord mayor, the *right worshipful* the aldermen and the commons of this city, in this present common-council assembled, and by the authority of the same, that all and every the said acts, orders and ordinances, so far as the same relate to the said offices of sheriffalty, shall from henceforth be, and the same are hereby repealed, annulled, and made utterly void and of none effect. That from henceforth, the right of electing persons to the said offices of sheriffalty shall be, and the same is hereby vested in the liverymen of the several companies of this city, to be for that purpose from time to time assembled in the common-hall of the *Guildhall* of this city; and that the general day of elections of persons to the said offices shall be yearly, the 24th day of *June*, unless the same shall happen to be *Sunday*, in which case, the said election shall be on the day then next following.

That whensoever it shall happen, that any person or persons elected to the said offices of sheriffalty, shall in any instance refuse or neglect to conform to this act, or shall depart this life, or be lawfully removed or discharged from the said offices, or from his or their respective election thereunto, or that upon any other occasion whatsoever, there shall be just cause to proceed to a new election; then, and in every such case, it shall and may be lawful, to and for the liverymen of the said several companies of this city, duly assembled as aforesaid, to proceed to, and make such *new election at such day* and time, as by the court of lord mayor and aldermen of this city, for the time being, shall be ordered or appointed, any thing to the contrary notwithstanding. That every person who shall hereafter be elected to the said offices of sheriffalty upon the said general election day, or any other time between the said general election day, and the 22d day of *September* in

the same year, when there shall be no actual vacancy in the said offices, shall take the same upon him on the vigil of *Saint Michael the archangel*, next following his said election, and shall hold the same, for and during the space of one whole year, from thence next ensuing; and that every person who shall be elected to the said offices, on the said 22d day of *September*, or at any time between the said 22d and 28th days of *September*, or upon a vacancy happening in the said offices, or when the sheriffs of this city and county of *Middlesex* for the time being, or either of them, shall hold over, as is hereinafter mentioned and provided, shall take the said offices upon him, on the 7th day next after notice of his said election, and shall hold the same until the swearing in of the new sheriffs, upon the vigil of *Saint Michael the archangel*, next following the day of his taking the said offices upon him as aforesaid. That if upon any future vigil of *Saint Michael the archangel*, it shall happen, that neither of the said persons elected to the said offices of sheriffalty, shall appear in the *Guild-hall* aforesaid, and take the said offices upon him; then, and in every such case, both the then sheriffs shall hold over and continue in the said offices, until some other persons shall be duly elected and sworn into the same, in their stead; and if upon any such vigil, it shall happen, that only one of the persons elected to the said offices shall so appear, and take the said offices upon him; then, and in every such last mentioned case, the junior in office of the then sheriffs, shall hold over and continue in the said offices, until some other persons shall be duly elected and sworn into the same in his stead; any thing, or any law, or custom to the contrary notwithstanding. That from henceforth, at every assembly of the liverymen of the several companies of this city, for the election of a person or persons to the said offices of sheriffalty; every aldermen of this city, who shall not actually have served the same, shall, according to his

In what instances
old sheriffs shall
hold over.

In what order
the old aldermen
to be put up and
take place.

his seniority in the said court of lord mayor and aldermen, and before any commoner of this city, be publicly put in nomination for the said offices; and every alderman of this city, who shall be elected to the said offices, shall therein take place according to his seniority in the said court, and have precedence of every commoner of this city.

Power to the lord mayor to nominate persons and how they shall be put up.

That from henceforth for ever, it shall and may be lawful, to and for the lord mayor of this city for the time being, at such time or times as he shall think proper, between the 14th day of *April*, and the 14th day of *June* in every year, to nominate in the said court of lord mayor and aldermen of this city, one or more fit and able person or persons (not exceeding the number of nine persons in the whole) being free of this city, to be publicly put in nomination for the said offices of sheriffalty, to the liverymen of the several companies of this city, to be hereafter in the common hall aforesaid assembled, for the election of a person or persons to the said offices, and the person or persons so nominated by any lord mayor of this city, shall at every such assembly of the said liverymen, after his and their respective nominations by the lord mayor as aforesaid, be publicly put in nomination for the said offices, before any other commoner of this city; and in the same order as he or they shall stand nominated by the lord mayor, until he or they shall respectively have been duly elected to the said offices, or shall have been duly discharged of and from such nomination, in such manner as is hereinafter mentioned.

400l. to be paid to discharge persons nominated by the lord mayor.

Provided always, that if any person so nominated by any lord mayor of this city, shall within six days after notice thereof, pay to the chamberlain of this city for the time being, the sum of 400 l. for the uses hereinafter mentioned, and 20l. marks, towards the maintenance of the ministers of the several prisons within this city, together with the usual fees, every such person shall be, and

and is hereby for ever exempted and discharged from such nomination, and from serving the said offices of sheriffalty, unless he shall afterwards take upon him the office of an alderman of this city, in which case, he shall be liable to be elected to the said offices of sheriffalty, such payment of the said sum of 400 l. and 20 marks notwithstanding.

That at every assembly of the liverymen of the said several companies of this city, in the said common-hall assembled, for the election of one or more person or persons to the said offices of sheriffalty, all and every such person or persons being free of this city, and then not exempted or discharged from the said offices, as shall then and there be for that purpose nominated by any two or more of the said liverymen, then and there present, and having a right of voting at such election, shall be publicly put in nomination for the said offices, next after such person or persons as shall have been so nominated for the said offices by any lord mayor of this city, and shall not then have been discharged from such nomination (if any such shall then be) or in default of such person or persons last mentioned, then next after such of the aldermen of this city, as shall not have served the said offices.

In what order persons nominated by two liverymen are to be put up.

And it is hereby further ordained and enacted, by the authority aforesaid, that no freeman of this city, who shall hereafter be elected by the said liverymen as aforesaid, or nominated by any lord mayor of this city as aforesaid, to or for the said offices of sheriffalty, shall be discharged from such nomination or election for insufficiency of wealth, unless he shall and do voluntarily take his corporal oath, before the said court of lord mayor and aldermen, *“ that he then is not of the value of 15,000 l. in lands, goods, and separate debts, and also unless six other citizens, freemen of this city, to be brought by him, and being of good credit and reputation, such as the said court shall approve*

In what cases, by whom, and how far persons to be excused for insufficiency of wealth.

“ approve of, shall and do likewise, before the same
 “ court, voluntarily testify upon their corporal oaths,
 “ that in their consciences they believe the said person so
 “ elected by the said liverymen, or so nominated by the
 “ lord mayor (as the case shall happen to be)
 “ hath deposed and sworn truly concerning his value as
 “ aforesaid,” in which case, and so often as the
 same shall happen, the said court of lord mayor
 and aldermen, shall and may at all times hereafter,
 discharge any person whatsoever, as well of and
 from any nomination which shall have been made
 of him by any lord mayor of this city as afore-
 said, as of and from any election which shall have
 been made of him by the liverymen of the several
 companies of this city as aforesaid, any thing
 notwithstanding.

In what instances
 the persons elect-
 ed to give bond,
 and the forfei-
 ture in case of
 default.

That every person who shall be elected to the
 said offices of sheriffalty, upon the said general
 election day, or at any other time between the
 said general election day, and the 14th day of
September in the same year, when there shall be no
 actual vacancy in the said offices, shall personally
 appear before the said court of lord mayor and
 aldermen in the inner chamber of the *Guildhall*
 aforesaid, at the first court there to be holden next
 after notice of his election, unless such reason-
 able excuse shall then and there be offered on his
 behalf, as the said court shall allow, and in case of
 such excuse allowed, then at such other subse-
 quent court or courts as the said court shall ap-
 point, and shall then and there become bound to
 the chamberlain of this city for the time being,
 his executors and administrators by his bond or
 obligation in the penal sum of 1000*l.* with condi-
 tion there under written, or thereupon indorsed,
 “ that if he shall personally appear on the vigil of
 “ *Saint Michael the archangel* then next following,
 “ between the hours of 12, and three of the clock in
 “ the afternoon, in the public assembly in the said
 “ *Guildhall*, in the place where the court of *Hustings* is
 “ usually holden, and then and there in the presence of
 “ the

the lord mayor of this city for the time being, and two of the aldermen of this city for the time being, and in case of the absence of the lord mayor, then in the presence of four of the aldermen, take the oath of office, there usually taken by the sheriffs of this city and county of Middlesex, then the said bond or obligation shall be void;" upon pain that every person so elected who shall not appear and become bound as aforesaid, shall (if an alderman of this city or a commoner previously nominated by the lord mayor of this city, as aforesaid), forfeit and pay to the uses herein after mentioned, the sum of 600*l.* or if he shall not then be an alderman of this city, or a commoner so previously nominated by the lord mayor of this city, the sum of 400*l.*

That if any freeman of this city who shall be duly elected to the said offices of sheriffalty, upon the said 14th day of September, or at any other time between the said 14th and 22d days of September in the same year, when there shall be no actual vacancy in the said offices, and shall have six days notice thereof as aforesaid, shall not appear on the vigil of *Saint Michael* the archangel, next after such notice, between the hours of 12 and three, in the public assembly in the *Guildhall* aforesaid, in the place where the said court of *Hustings* is usually holden, and then and there in the presence of the lord mayor of this city for the time being, and two of the aldermen of this city, for the time being, or in case of the absence of the lord mayor, then in the presence of four of the aldermen of this city for the time being, take the oath of office there usually taken by the sheriffs of this city and county of *Middlesex*, then and in every such case, such person, shall (if an alderman of this city, or if a commoner previously nominated by the lord mayor as aforesaid) forfeit and pay to the uses herein after mentioned the sum of 600*l.* or if he shall not then be

Penalties on persons elected on the 24th or between the 14th and 22d of September, when no vacancy, who shall not take the said offices in time.

Penalties on persons elected on the 22d or between the 22d and 28th of September, or in cases of vacancy, or of sheriffs holding over, who shall not take the office in time.

an alderman of this city, or a commoner so nominated by the lord mayor, the sum of 400*l*.

That if any freeman of this city, who shall be duly elected to the said offices of sheriffalty on the said 22d day of *September*, or at any time between the said 22d and 28th of *September*, or upon a vacancy happening in the said offices, or when the sheriffs for the time being, or either of them, shall have held over as aforesaid, shall not personally appear on the 7th day next after notice of his election, between the hours of 12 and 3 in the public assembly at the *Guildhall* aforesaid, in the place where the said court of *Hustings* is usually holden, and then and there, in the presence of the lord mayor of this city, for the time being, and two of the aldermen of this city, for the time being, or in case of the absence of the lord mayor, then in the presence of four of the aldermen of this city for the time being, take the oath of office there, usually taken by the sheriffs of this city and county of *Middlesex*, then and in every such case, such person shall (if an alderman of this city, or a commoner previously nominated by the lord mayor as aforesaid) forfeit and pay to the uses herein after mentioned, the sum of 600*l*. or if he shall not then be an alderman of this city, or a commoner so previously nominated by the lord mayor, the sum of 400*l*.

How penalties are to be recovered.

That all penalties and sums of money to be forfeited by virtue of this act or ordinance, shall be recovered by action of debt, to be commenced and prosecuted in the name of the chamberlain of this city for the time being, in one of the courts of record of the king's majesty, his heirs and successors within this city, where no essoign or wager of law shall be admitted or allowed for the defendant; and that the chamberlain of the city for the time being, in all such actions to be prosecuted by virtue of this act, wherein he shall obtain judgment by verdict, *nil dicit*, or confession, or upon demurrer, shall and may recover his costs of suit, and if a verdict shall be given for the defendant,

or if the plaintiff shall be non-suited, or discontinue his action after the defendant shall have appeared, or if upon demurrer, judgment shall be given against the plaintiff, the defendant or defendants, shall and may recover costs, and have the like remedy for the same, as any defendant or defendants hath, or have in other cases by law.

That if it shall happen that two or more persons nominated by any lord mayor or lord mayors of this city, for the said offices of sheriffalty, shall between the 14th of *April*, and the 24th of *June*, in any one year, pay unto the chamberlain of this city for the time being, the sum of 400 *l.* to be exempted and discharged from their said nomination, and from serving the said office according to the proviso for that purpose herein before contained, then, and in every such case, the said chamberlain for the time being, shall out of the monies so paid to him, issue and pay the sum of 100 *l.* to each of the two persons who upon the vigil of *Saint Michael* the archangel in that year, or at any other time thereafter, shall first and next take the said offices upon them; and if it shall happen that only one person so nominated by any lord mayor, shall pay the said sum of 400 *l.* within the time, and for the purpose aforesaid, then and in every such last mentioned case, the said chamberlain for the time being, shall thereout issue and pay the sum of 50 *l.* to each of the two persons who upon the said vigil in that year, or at any other time hereafter, shall first and next take the said offices upon them; and that the residue of all and every the sums of 400 *l.* which shall hereafter be paid to the chamberlain of this city for the time being, within the time, and for the purpose aforesaid, and also all penalties and sums of money to be forfeited and paid, by virtue of, and in pursuance of this act, shall go and be applied to the use of the said mayor and commonalty, and citizens of the city of *London*, subject to such orders and resolutions of this court, as have hitherto been

In what cases the sheriffs to have part of the fines, and how the rest of the fines and forfeitures to be applied.

made touching the monies paid into the chamber of *London* as a fine for not holding the said offices, and to such further orders and resolutions of this court, as shall hereafter be made touching the same.

No person who has fined upon any former acts to be eligible.

That every person who hath at any time heretofore paid to the chamberlain of this city for the time being, for the use of the mayor and commonalty and citizens of the same city, any sum of money to be exempted or discharged from the said offices of sheriffalty, shall be, and is hereby forever exempted, and absolutely discharged from the said offices of sheriffalty, unless such person shall at any time hereafter take upon him the office of an alderman of this city, in which case he shall be, and is hereby declared to be subject, and liable to be elected to the said offices, such payment or any thing to the contrary notwithstanding.

No person to serve a second time.

That no person who now hath, or hereafter shall have, duly served the said offices of sheriffalty of this city and county of *Middlesex*, according to the true intent and meaning of this present act, or of any former act of common council, shall hereafter be eligible to the said offices a second time, any thing contained to the contrary notwithstanding.

The Oath of the Sheriff.

The oath of the sheriffs of *London*.

“ Y E shall swear, that ye shall be good and true unto our sovereign lord the king of *England*, and unto his heirs and successors; and the franchise of the city of *London*, within and without, ye shall save and maintain to your power; and ye shall well and lawfully keep the shires of *London* and *Middlesex*, and the offices that to the same shires appertain to be done well and lawfully, ye shall do after your
“ wit

“ wit and power ; and right ye shall do, as well
 “ to poor as rich, and good custom you shall none
 “ break, ne evil custom arrere, and the assize
 “ bread, all, and all other victuals within the
 “ franchise of this city, and without, well and
 “ lawfully ye shall keep, and do to be kept, and
 “ the judgments and executions of your court,
 “ ye shall not tarry without cause reasonable ; ne
 “ right shall you none disturb, The writs that
 “ to you come touching the state and franchise of
 “ this city, you shall not return, till you have
 “ shewed them to the mayor and the council of
 “ this city, for the time being, and of them have
 “ advisement, and ready you shall be at reason-
 “ able warning of the mayor, for keeping of the
 “ peace, and maintaining the state of this city ;
 “ and all other things that longen to your office,
 “ and the keeping of the said shires, lawfully you
 “ shall do, by you and yours ; and the city you
 “ shall keep from harm after your power, and
 “ the shire of *Middlesex* ; ne the goal of *New-*
 “ *gate* you shall not let to farm. *As help you God,*”

Addition.

“ **Y**E shall also swear, that ye shall freely
 “ give all such rooms and offices of ser-
 “ jeants and yeomen, as shall happen to become
 “ void during the time ye shall remain in the of-
 “ fice of sheriffalty, to such apt and able person
 “ and persons, as shall be by you nominated to
 “ the lord mayor and court of aldermen, and by
 “ them admitted, without any money or other re-
 “ ward to be had, taken or hoped for in respect
 “ thereof, according to the act of common coun-
 “ cil made and provided in that behalf, the nine
 “ and twentieth day of *April*, in the six and
 “ twentieth year of the reign of our sovereign
 “ lady queen *Elizabeth*, &c. *As God you help.*”

To attend to be
sworn in.

The sheriffs are to attend on *Michaelmas* day in the forenoon at *Guildhall* to be sworn in ; in the evening to take by indenture the prisoners in *Newgate* on the *Middlesex* side, and by inrollment on the *London* side, of *Ludgate*, *Poultry*, and *Wood-street Compters*, and at the same time execute the grants to the keepers of *Ludgate* and *Newgate*.

N. B. The keepers as well as the serjeants execute their securities in the morning.

The next day they attend at the exchequer, before the curfitor baron to be sworn to answer and pay the fees, &c.

On the morrow after *Low Sunday*, to attend at the exchequer and have ready the exchequer cloths, (which are provided ready, and 40 s. by tally for the proffers for the liberties and franchises of *London* and *Middlesex* for half a year then ended, a public breakfast is prepared for the curfitor baron and clerks.

The like payment is to be made on the morrow after *Michaelmas* day; in default of which, the liberties and franchises of the city are liable to forfeiture.

In *Michaelmas* term to present the barons and officers with 42 loaves of fine sugar, viz.

- 6 to the chief baron,
- 6 to the curfitor baron,
- 12 to the pipe office,
- 12 to the secondaries,
- 6 to the under-sheriffs.

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Serjeants and
yeomen.

The serjeants and yeomen had formerly at *Christmas* winter liveries, and at *Midsummer* summer liveries, which are now reduced to one livery, and in lieu thereof, the serjeants are paid 33 s. and 4 d. a-piece, and the yeomen 30 s. a-piece.

Sheriff of *Lon-*
don two persons,
one cannot make
return.

The sheriff of *London* is known in law to be two persons; therefore, if one make his return without his fellow, this is fatal, it being as no return

at

all, or a return without the *sheriff's* name subscribed :

N. B. London had no sheriffs in the 13 of *Ed. 1.* *Leon. 284.*

A man was arraigned and condemned of felony, and was imprisoned in *Newgate*, at the goal delivery for *Middlesex*, and after a writ of execution for debt issues against him out of the exchequer upon a recovery against the party (the felon) directed to the sheriffs of *London* who serve the execution upon the body of the prisoner in *Newgate*, and after the felon was pardoned of the felony, it became a question whether the execution was lawful, and if it was, then whether the pardon had not discharged it.

A man condemned in execution for debt, execution issues, sheriffs of *London* serve it, the man pardoned, whether execution be lawful.

First, By all the barons, the execution served by the sheriffs of *London* by force of a *capias* directed to the sheriffs of *London* was not lawful ; because the party was in prison in the goal of *Middlesex* ; and although *Newgate* was within *London*, yet is a prison indifferent for both counties, and the prisoner was in the prison for *Middlesex*, and not for *London* ; and the process ought to have been directed to the sheriff of *Middlesex*.

Held by the barons not lawful because he was of the *Middlesex* side.

Secondly, The sheriff may chuse to serve the execution or not, upon the body of the felon for debt ; for that inasmuch the king by the judgment of the felony hath interest in his person, this interest is sufficient privilege against the action, or execution of any subject ; yet if the sheriff will serve the execution, then the prisoner shall be said to be in execution for the debt, and yet subject to the judgment of felony for the king ; and if the felon escape, the sheriff shall answer to the king and the party also, and if the king pardon the felony, and the sheriff suffers him to go at large, it is an escape.

The sheriff may chuse to serve the execution or not,

yet if he will serve it, held good, and liable to an escape.

That upon a *ca. fa.* to the sheriff of *Middlesex* to take *J. S.* if the sheriff take him and put him in *Newgate*, which is the common prison for *London* and *Middlesex*, and after another writ of execution

On *ca. fa.* to sheriff of *Middlesex* if he take him, and after another, to the

iffs of *London*,
he shall not be
charged in *Lon-*
don.

Commitment by
sheriff of *Mid-*
dlesex, is not a
commitment in
London, though
the sheriffs of
London and
Middlesex are
one.

If sheriffs does
not take on him
the offices, how
punished former-
ly, and how
now.

No sheriff to
keep any table
for the judges.

comes to the sheriff of *London*; although the sheriffs of *London* are also sheriffs of *Middlesex*, and *Newgate* (where the prison is) is the prison for both counties; yet, the prisoner shall not be said, to be in execution upon this new writ in *London*, nor may the sheriff of *London* serve it upon him, because he is in another county.

For when the commitment is to *Newgate* by force of a writ directed to the sheriff of *Middlesex*, he may not be said in any respect to be in the city of *London*; for the counties continue several, and the prison several, in respect of the several commitments: for there are two several sides and a partition between them, 1 *Rol. Abr.* 894. *Coaa's case*, *Trin.* 16 *Jac. B. R.*

But this is now done by a judge's order, commanding the sheriffs to charge him with the writ.

Formerly, if a person refused to take upon him the office of sheriff, it was usual to punish him in the star chamber; and he may now be proceeded against by information of the court of king's bench. Also, if he refuses to take the oaths enjoined him, or officiates in the office before he hath thus qualified himself, that court, (which hath a general superintendency over all officers and ministers of justice) will grant an information against him: And it hath been held, that a refusal of oaths enjoined to be taken, amounts to a refusal of the office. 3 *Lew.* 116. *Carth.* 307.

The vast expence, which custom had introduced in serving the office of high sheriff, was grown such a burthen to the subject, that it was enacted by the statute 13 & 14 *Car. 2. c. 21.* "That no sheriff should keep any table at the
" assizes, (except for his own family,) or give any
" presents to the judges or their servants, or have
" more than 40 men in livery: Yet, for the sake
" of safety and decency, he may not have less
" than 20 men in *England*, and 12 in *Wales*; upon
" forfeiture in any of these cases of 200 l."

This

How to procure his Patent.

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This act not to extend to the sheriffs of *London* and *Middlesex*, the sheriff of *Westmorland*, or any sheriff of any city and county, or town and county within this realm, but they shall do as heretofore hath been there used and accustomed.

Having now shewn, how sheriffs of counties are nominated, as well as the election of sheriffs for the city of *London*, who have the sheriffwick of *Middlesex* and the exemption; I shall next proceed to shew, how a sheriff is to obtain his patent from the king, who commits to him the custody of the county, &c.

How to Procure his Patent, &c.

THE first thing that every new elected sheriff must do at the entrance into his office is, that before he receives his patent, and before he exercises any part of his office, he must put in sufficient sureties, by himself, or by his deputy or deputies, into the king's exchequer, and there enter into recognizance in such sum, and upon such conditions, as the *lord treasurer* and the *barons* of the *exchequer* shall think meet, stat. 2 & 3 *Ed. 6. c. 34.*

He must give security in the court of exchequer.

This is done by an application to one of the clerks in court in the exchequer, who will draw up such recognizance, with condition for payment of his proffers or accompts, which is twice in the year, viz. at or before *Messsem Paschæ* and *Menssem Michaelis* then next following; which recognizance is to be taken to the chief or any one of the barons, with the sheriff and his two sureties, (who are usually bound in 200 *l.* each) who enter into the recognizance. This being done, the clerk in court gives a note to one of the six clerks in chancery of the county, certifying, that the sheriff hath entered into the usual recognizance. The clerk then gets the patent made out, the writ of assistance, and writ of discharge, to be delivered to

How to apply for the recognizance

After recognizance entered into, how to get patent writ of discharge, &c.

to his predecessor; which writ of discharge, is delivered to the preceding sheriff or his deputy with all speed, for the benefit of the under sheriff; because, 'til the delivery of that writ, the precedent sheriff may do execution of all process.

Must take the oaths of allegiance, &c. stat. 1 Geo. 1. c. 13. s. 1. before he can use the office, and how, or may have a *dedimus* at same time his patent is made.

The high sheriff must take the oaths of *allegiance*, *supremacy*, &c. and for the due execution of his office, before he can use or exercise the same, before one of the judges of assize of that shire whereof he is sheriff, or before a master in chancery, (if he be in *London*) if not, it is usual to get the six clerk to bespeak a *dedimus potestatem* directed to any two justices of the peace of the same county, whereof one must be of the *quorum*; giving them authority thereby to tender and administer the said oaths.

To whom may be directed.

N. B. It is said, that the *dedimus potestatem* may be directed to any other person or persons, *Dyer* 168. And is usually sent into all the shires of *Wales*, stat. 34 *H. 8. c. 26.* And such commissioners, must certify the same into the chancery, on the day commanded in the writ, which may be as follows:

Return of *dedimus*.

By virtue of this writ to us directed, (to wit) on the day of in the year within mentioned, the within named *A. B. Esq;* sheriff of the county of , took the oath of office, as well as the several other oaths in the schedule to this writ annexed, in our presence, as within he is required to do. The answer of

F. B. } Commissioners.
M. D. }

Oath of the high sheriff.

By the 3 *Geo. 1. c. 15. s. 18.* It is enacted,
“ That instead of the oath usually administered to
“ sheriffs, at the entering upon their offices, the
“ following oath shall be taken by them, and
“ each of them respectively, (excepting the she-
“ riffs of the several counties in *Wales*, and of
“ the county palatine of *Chester*, viz. I *A. B. do*
“ swear, that I will well and truly serve the king's
“ majesty in the office of sheriff of the county of
“ , and promote his majesty's profit in all
“ things that belong to my office, as far as I legally can
“ or

or may; I will truly preserve the king's rights, and all that belongeth to the crown; I will not assent to decrease, lessen, or conceal the king's rights, or the rights of his franchises; and whensoever I shall have knowledge, that the rights of the crown are concealed or withdrawn, be it in lands, rents, franchises, suits or services, or in any other matter or thing, I will do my utmost to make them be restored to the crown again; and I may not do it myself, I will certify and inform the king thereof, or some of his judges; I will not respite or delay to levy the king's debts for any gift, promise, reward or favour, where I may raise the same without grievance to the debtors; I will do right as well to poor as to rich, in all things belonging to my office: I will do no wrong to any man, for any gift, reward or promise, nor for favour or hatred; I will disturb no man's right, and will truly and faithfully acquit at the exchequer, all those of whom I shall receive any debts or duties belonging to the crown; I will take nothing whereby the king may lose, or whereby his right may be disturbed, injured or delayed; I will truly return, and truly serve all the king's writs, according to the best of my skill and knowledge; I will take no bailiffs into my service, but such as I will answer for, and I will cause each of them to take such oaths as I do, in what belongeth to their business and occupation; I will truly set and return reasonable and due issues of them that be within my bailiwick, according to their estates and circumstances, and make due panels of persons able and sufficient, and not suspected or procured, as is appointed by the statute of this realm; I have not sold or let to farm, or contracted for, nor have I granted or promised for reward or benefit, nor will I sell or let to farm, nor contract for, or grant for reward or benefit, by myself, or any other person for me, or for my use, directly or indirectly, my sheriffwick or any bailiwick thereof, or any office belonging thereunto, or the profits of the same, to any person or persons whatsoever; I will truly and diligently
“ execute

“ execute the good laws and statutes of this realm;
 “ and in all things well and truly behave myself in my
 “ office, for the honour of the king, and the good of
 “ his subjects, and discharge the same according to the
 “ best of my skill and power. So help me God.”

The oath concerning the office of the sheriff, seems, to be by the ancient common law of this land, thus,

The original
 oath,

Ye shall swear, That well and truly ye shall serve the king's majesty in the office of the sheriff of the county of Cambridge, and do the king's profit in all things that belongeth to you to do, by way of your office, as far forth as you can or may; you shall truly keep the king's rights, and all that belongeth to the crown; ye shall not assent to decrease to lessing, ne concealment of the king's rights, or of his franchises, and whensoever you shall have knowledge, that the king's rights, or the rights of his crown been concealed or withdrawn, (be it in lands, rents, franchises, or suits, or any other things,) ye shall do your true power to make them be restored to the king again, and if you may not do it, ye shall certify the king, or some of the council thereof, such as you hold for certain will say it to the king; ye shall not respite the king's debts for any gift or favour, where you may raise them without great grievance of the debtors; ye shall truly and rightfully treat the people of your sheriffwick, and do right as well to poor as rich, in all that belongeth to your office; ye shall do no wrong to any man for any gift or other behest, or promise of goods, for favour, nor hate; ye shall disturb no man's right; ye shall truly acquit at the exchequer all those of whom ye shall any thing receive of the king's debts; ye shall nothing take whereby the king may lose, or whereby the right may be letted or disturbed, or the king delayed; ye shall truly return, and truly serve all the king's writs as far forth as shall be to your cunning; ye shall not have to be your undersheriff of any of the sheriff's clerks

clerks of the last year passed; ye shall take no bailiff into your service, but such as you will answer for; ye shall make each of your bailiffs to make such oath as you make yourself, in that belongeth to your occupation; ye shall receive no writ by you or any of yours unsealed, or any sealed under the seal of any justice, save of justices in oyer, or justices assigned in the same shire where ye be sheriff in, or other justices having power and authority to make any writs unto you by the law of the land, or of the justices of *Newgate*; ye shall make your bailiffs of true and sufficient men in the county. Also, ye shall do all your power and diligence to destroy and make to cease all manner of heresies and errors, commonly called lollaries within your bailiwick, from time to time to all your power, and assist and to be helping to all ordinaries and commissioners of the holy church, and favour and maintain them as oftentimes as ye shall be required by the ordinaries commissioners; ye shall be dwelling in your own proper person within your bailiwick for the time ye shall be in the same office, (except you be otherwise licensed by the king,) ye shall not let your sheriffwick, nor any bailiwick thereof, to any man; ye shall truly set and return reasonable and due issues of them that be within your bailiwick, after their estate and behaviour; and make your panels yourself of such persons as be most next, most sufficient, and not suspect, nor procured, as it is ordained by the statutes; and over this in eschewing and restraint, of the man-slaughter, robberies, and other manifold grievous offences that be done daily, (namely, by such as name themselves soldiers, and other vagrants, the which increase in number and multiply, so that the kings subjects may not sure ride, nor go to do such things as they have to do, to their intolerable hurt and hindrance;) ye shall truly and effectually with all diligence possible to your power execute the statutes, as the statutes of *Winchester* and vagabonds: All these

these things ye shall truly observe and keep, as good help you, and by the contents of this book.

There being in this oath some things that were too strict with respect to the sheriff, therefore Lord Coke took several exceptions thereto.

1st, "That he should seek to suppress all errors and heresies, commonly called Lollardism, and should be assistant to the commissioners and ordinaries in church matters," because the statute directing them were repealed by 1 E. 6. and 1 Eliz. 2^d, "That he should return reasonable issue," exception, because it was appointed by the statute, and a penalty for not performing it, therefore ought not to be on oath. 3^d, "That he should return all juries, of the nearest and sufficient persons;" because that is appointed by the statute, and done by the under-sheriff. 4th, "That he should cause the statute of Winton, and statute against rogues, &c. to be put in execution;" because altered, and the statutes

Answer to the
first,
second,
third,
fourth.

executed by justices of peace. It was held, that the first exception should be omitted. That the second, may be well enjoined by the king without parliament for publick benefit. That the third, is proper, for it is not strictly to be intended, that he should return juries, but ought to be, that he by himself, or under-sheriff, should return, &c. for *qui per alium facit, per seipsum facit*. That the fourth, the oath being appointed, and continued divers years, and may well be continued for the public benefit. And, although authority be given to justices of the peace, to put those statutes in execution; yet it doth not take away the sheriff's right, who is the public conservator, Sir Ed. Coke, Cro. Car. 25.

To take the sacrament.

All persons in office, are to take the sacrament, and the declaration against transubstantiation, 25 Car. 2. c. 2.

Six months allowed after.

And by the statute 16 Geo. 2. c. 30. s. 3. It is enacted, "That after the 31st of December, all persons shall receive the sacrament of the Lord's supper within six months after admittance in, or receiving their authority

authority and employment in some public church,
on some Lord's day after divine service and sermon."

The sheriffs of *Wales and Chester*, shall not be obliged to take the said oaths, but shall take the accustomed oath as formerly, except the words following, viz. "Ye shall be dwelling in your own proper person, within your bailiwick, for the time ye shall continue in the same office, except ye be otherwise licensed by the king," which words shall hereafter be left out. 3 Geo. 1. c. 15. s. 22.

Wales and Chester not obliged to take the oaths, by 3 Geo. 1. c. 15.

Nor is it to extend to the sheriffs of *London and Middlesex*, the county palatine of *Durham*, the county of *Westmorland*, or to the sheriffs of any city or town being a county of itself, as to their placing in or disposing of any of the offices of their under-sheriffs, county clerks, bailiffs, or other officers, or their continuance therein. Sect. 23.

Not to extend to *London and Middlesex, Durham, Westmorland*, and other cities.

After the sheriff hath taken the oaths before mentioned, then on the writ of discharge being delivered to his predecessor the old sheriff, or his under-sheriff, (or at or before the first county court to be kept by the new sheriff,) the new sheriff must take over from the old sheriff, all his prisoners, (which are in the gaol by their names) and all his writs precisely by view, and by indenture to be made between the old and new sheriff; in which indenture, all the causes, which the old sheriff hath against every prisoner, must be set forth, and delivered, at the peril of the old sheriff, or else the new sheriff need not take any notice of any thing omitted and left out of the indenture; for he is not chargeable with it, but the old sheriff.

He must take by indenture the prisoners and writs.

3 Co. 72. *Westlie's case*. Dalt. 15.

By statute 20 Geo. 2. c. 37. "All sheriffs, shall, at the expiration of their office, turn over to the succeeding sheriff, by indenture and schedule, all such writs and process as remain in their hands unexecuted, who shall execute and return the same; and in case any sheriff neglect to turn over such process, he shall be liable to make

Writs to be turned over to the succeeding sheriff by indenture

How to procure his Patent.

"make satisfaction by damage, and costs to the party aggrieved." *Sec. 1.*

Not bound to receive prisoners, but at the goal.

The new sheriff is not bound to receive the prisoners from the old sheriff, but only at the goal, and in no other place; and yet, if the old sheriff shall deliver his prisoners to his successor when he is chosen, who receives them out of the goal; the old sheriff shall be discharged by this delivery. *Dalt. 16.*

He must read his patent at first county court, and appoint county clerk,

and four deputies to make replevins.

The new sheriff at the first county court which shall be after his election, and the discharge of the old sheriff, must read, or cause to be read, his patent and his writ of assistance; and must also nominate his under-sheriff, (or county-clerk) and depute, appoint, and proclaim four deputies (at the least) in that county, to make replevins for the ease of the county; which deputies ought to dwell not past *twelve miles* distant one from another, in every quarter of the county one, to grant replevins in the sheriff's name, and to make deliverance of distresses, when need shall require. And they shall in the sheriff's name, make replevins, as the sheriff himself may do. *1 & 2 Phil. & M. c. 12.* And the sheriff for every month that he shall lack such deputies, shall forfeit 5 *l.* and within two months next after he hath received his patent, he may appoint such deputies, &c. *Ibid.*

Sheriff cannot be elected a knight of the shire for that county he is sheriff of,

nor act as a justice of peace.

It is holden, that a sheriff cannot be elected knight of the shire for that county for which he is sheriff, *4 Inst. 48. Lut. Rep. 326.* And by statute *1 Mar. stat. 2. c. 8. s. 2.* although a sheriff is by virtue of his office, a conservator of the peace, yet it is enacted, "that no person having the office
" of sheriff of any county, shall exercise the office
" of justice of the peace in any county where he
" shall be sheriff during the time he shall use the
" office of sheriff: And all and every acts to be
" done by any sheriff, by authority of any com-
" mission of the peace, during the time of his
" sheriffwick shall be void. But when he is out

of office, he may act by force of the same commission." *Dalt.* 27.

By the 14 *E. 3. c. 7.* it is enacted, " That no sheriff, &c. shall tarry or abide in his office above one year, on pain to forfeit 200*l.* yearly, as long as he occupieth the office; and that every pardon for such offence or forfeiture shall be void; and letters patent made to occupy such office above one year, shall be void; any words or clause of *non obstante*, put into such patent notwithstanding; and that whosoever shall presume to take upon himself the office of a sheriff above one year, by force of such letters patent, shall be disabled from ever after to be sheriff within any county of *England.*" *Vide* 23 *H. 6. c. 8.* 6 *H. 8. c. 18.* 42 *Ed. 3. c. 9.*

If a new sheriff hath not his patent ready, and does not take the oaths, &c. every old sheriff may occupy his office during the terms of *St. Michael* and *Hilary*, (after the year that their office is ended,) unless he be lawfully discharged. 12 *E. 4. c. 1.* 17 *Ed. 4. c. 6.* *Crom.* 208. 23 *H. 6. c. 38.*

But the sheriffs and under-sheriffs within the city of *London*, and of such counties, in which they be inheritable to the office of sheriff, are excepted. 23 *H. 6. c. 7.*

It is said, if a sheriff hath in his custody several in execution, and dies in the time of his office, and after a new sheriff is made, here the new sheriff, at his peril, ought to take notice of all the executions which are against any person which he finds in his goal: And this is of necessity, for that there is no person to make delivery to him of them, or to give him notice; and besides, the new sheriff may take notice himself of all executions, they being upon record. 3 *Co.* 72.

But now by statute 3 *Geo. 1. c. 15. s. 8.* It is enacted, " That if any high sheriff of any county of *England* or *Wales*, shall happen to die before the expiration or determination of his year, or before he be lawfully superseded; in such case,

E

" the

How long to continue in his office.

28 *H. 6. c. 3.*
8 *Ed. 4. c. 4.*

If new sheriff hath not his patent ready, old sheriff to hold over.

Sheriffs of *London*, &c. excepted.

If sheriff dies in office, and a new one made, to take notice of all writs, &c.

Sheriff dying before his office expired, his under-sheriff, or deputy, shall continue in office, and execute the

same in the deceased sheriff's name, till a new sheriff sworn, and be answerable, and the security given by the under-sheriff to the deceased sheriff, is to continue during the interval.

Note that hath been sheriff, shall be again in three years.

To abide in proper person in his county.

Hath no jurisdiction out of his county.

“ the under-sheriff or deputy sheriff, by him appointed, shall nevertheless continue in his office, and shall execute the same, and all things belonging thereunto, *in the name of the deceased sheriff*, until another sheriff be appointed for the said county, and sworn as directed; and the said under-sheriff, or deputy sheriff, shall be answerable for the execution of the said office in all things, and to all respects, intents and purposes whatsoever, during such interval, as the high-sheriff so deceased, would by law have been, if he had been living; and the security given to the high-sheriff so deceased by the said under-sheriff, and his pledges, shall stand, remain, and be a security to the king, his heirs and successors, and to all persons whatsoever, for such under-sheriff's due performance of his office during such interval.”

By statute 1 Ric. 2. c. 11. it is ordained, “ That none that hath been sheriff of any county by *one whole year*, shall be *within three years next ensuing*, chosen again, or put in the same office of sheriff, if there be other sufficient in the said county, of possessions and goods to answer to the king and his people.” 14 Ed. 3. stat. 1. c. 7. 42 Ed. 3. c. 9. 23 H. 6. c. 8.

By statute 23 H. 6. c. 10. every sheriff shall abide in his proper person within his bailiwick, for the time he shall be such officer, (except he be otherwise licensed by the king) and that the said sheriff be sworn to do the same in special. But now this latter part is left out in the oath. *Vide 3 Geo. 1. c. 15.*

Hence, it is clear, that a sheriff hath no jurisdiction in any other county, nor can he do a judicial act and in which his personal presence is required, out of his county; but it is held, he may a ministerial act, as make a panel return a writ out of his county. 9 H. 4. c. 1. Dalt. 22. or assign a bail bond. But, if he be beyond sea, and make a panel or any return there, and sends it into *England,*

England, it is not good, for he is an officer but only in England. *Ibid.*

If on a *habeas corpus*, &c. the sheriff is commanded to carry a prisoner to a certain place out of his county, and in doing this, he is obliged to go through several counties, to this special purpose he hath authority in these other counties.

Dalt. 23.

So, if a prisoner of his own wrong, shall make an escape, and fly into another county, the sheriff or his officers, upon fresh suit, may take him again in another county. *Plow. 37. Dalt. 23.*

No sheriff shall assign, grant, or let to farm his office, in any manner, nor his county, nor any of his bailiwicks, hundreds, nor wapentakes; (nor any of his courts it seems) nor any part thereof, upon pain to forfeit 40*l.* 23 *H. 6. c. 9. f. 1.*

H. 4. c. 5.

In construction hereof, it hath been holden, that this is a particular law, and must be pleaded, otherwise the judges cannot take notice of it.

3 *Keb. 678. Ellis v. Nelson.*

It hath been holden, that a lease thereof, though no rent was ever received, is within the statute, the intent thereof being, that sheriffs should keep their counties in their own hands. 20 *H. 7. 13.*

Dalt. c. 20. &c. B. R. Grants, 39.

It seems the better opinion, that a lease reserving only part of the profits, is also within the statute. *Plow. 27. Dalt. 23.*

But it hath been doubted, whether a lease made by the sheriff of his office or county only by parol, be within the statute. *Dalt. 24.*

By 3 *Geo. 1. c. 11. f. 15.* "It shall not be lawful for any person to buy, sell, let, or take to farm, the office of under sheriff, or deputy sheriff, seal keeper, county clerk, shire clerk, gaoler, bailiff, or any other office pertaining to the office of high-sheriff, or to contract for any of the said offices, on forfeiture of 500*l.* one moiety to his majesty, the other to such as shall sue in

E 2

"any

If on *habeas corpus*, he is commanded to take a prisoner to a place out of his county, and goes through several counties he hath authority.

So, if a prisoner escape, the sheriff may take him in another county.

Cannot dispose of his bailiwick.

Construction

Lease of rent, though no part reserved, is within the statute.

Lease reserving part.

By parol doubted.

Penalty of buying or selling any office under a sheriff.

Proviso, not to hinder him from constituting an under-sheriff, &c. nor an under-sheriff acting as high-sheriff on his death, from appointing a deputy, nor from taking the fees of their office or security for answering the same, nor discharge any officer from accounting, &c. for fees, nor hinder the sheriff from allowing salaries, nor any of them from receiving the same.

“ any court at *Westminster* within *two years* after
 “ the offence. Provided, that nothing in this act
 “ shall hinder any high-sheriff from constituting an
 “ under-sheriff or a deputy sheriff, as by law he
 “ may; nor to hinder the under-sheriff, in case of
 “ the high-sheriff’s death, when he acts as high-
 “ sheriff, from constituting a deputy; nor to hin-
 “ der such sheriff or under-sheriff from receiving the
 “ lawful fees of his office, or from taking security
 “ for the due answering the same; nor to hinder
 “ such under-sheriff, deputy sheriff, seal keeper,
 “ &c. from accounting to the high-sheriff for all
 “ such lawful fees as shall be by them taken, nor
 “ for giving security so to do; nor to hinder the
 “ high-sheriff from allowing a salary to his under-
 “ sheriff, deputy sheriff, seal keeper, county clerk,
 “ shire clerk, goaler, bailiff, or other officer, for
 “ the execution of the said offices, places or em-
 “ ployments, or any of them, as to him shall seem
 “ meet; nor to hinder or prevent the under-sheriff,
 “ &c. from taking or receiving such salary or re-
 “ compence for his or their pains and services
 “ therein. *f. 11.*

*The High-sheriff’s Power and Duty;
 and also of appointing an Under-sheriff,
 and other Deputies.*

Importance to have sheriff appointed.

Judicial capacity.

IT is of the utmost importance to have the sheriff appointed according to law, when we consider his power and duty. These are either *as a judge*, as the *keeper of the king’s peace*, as a *ministerial officer* of the *superior courts of justice*, or as the *king’s bailiff*. In his *judicial capacity*, he is to hear and determine all causes of forty shillings value and under, in his county court, and he has also a judicial power in divers other civil cases: He is likewise to decide the elections of knights of the shire, (subject to the control of the house of commons,) of coroners, and of verderors; to judge of the qualifications of voters, and to return such as shall be duly elected. *Dalt. c. 4.*

As the *keeper of the king's peace*, both by commission and special commission, he is the first man in the county, and superior in rank to any nobleman therein, during his office, 1 *Roll. Rep.* 237. He may apprehend, and commit to prison, all persons who break the peace, or attempt to break it; and may bind any one in a recognizance to keep the king's peace. He may, and is bound *ex officio* to pursue, and take all traitors, murderers, felons, and other misdoers, and commit them to gaol for safe custody. He is also to defend his county against any of the king's enemies when they come into the land: And for this purpose, as well as for keeping the peace, and pursuing felons, he may command all the people of his county to attend him; which is called the *posse comitatus*, or power of the county. *Dalt. c.* 95. which summons every person above fifteen years old, and under the degree of a peer, is bound to attend upon warning, *Lamb. Eiren.* 315. under pain of fine and imprisonment, 2 *H. 5. c.* 8. But though the sheriff is thus the principal conservator of the peace in his county; yet, by the express directions of the great charter, cap. 17. he, together with the constable, coroner, and certain other officers of the king, are *forbidden to hold any pleas of the crown*, or, in other words, *to try any criminal offence*. For it would be highly unbecoming, *that the executioners of justice, should be also the judges*; should impose, as well as levy, fines and amercements; should one day condemn a man to death, and personally execute him the next. Neither, as has been said before, may he act *as an ordinary justice of the peace, during the time of his office*; for this would be equally inconsistent, he being in many respects the servant of the justices.

As keeper of the king's peace.

Posse comitatus.

Persons above fifteen to attend.

Cannot hold pleas of the crown.
Reason.

In his *ministerial capacity*, the sheriff is bound to execute all process issuing from the king's courts of justice. In the commencement of civil causes, he is to serve the writ, to arrest, and to take bail; when the cause comes to trial, he must sum-

Ministerial capacity.

mon and return the jury; when it is determined, he must see the judgment of the court carried into execution. In criminal matters, he also arrests and imprisons, returns the jury, has the custody of the delinquent, and executes the sentence of the court, though it extends to death itself.

As the king's
bailiff,

F. de laud. c. 24.

As the *king's bailiff*, it is his business to preserve the rights of the king within his bailiwick; for so his county is frequently called in the writs, a word introduced by the princes of the Northern line, in imitation of the *French*, whose territory is divided into bailiwicks, as that of *England* into counties. He must seize, to the king's use, all lands devolved to the crown by attainder or escheat; must levy all fines and forfeitures; must seize and keep all waifs, wrecks, estrays, and the like, unless they be granted to some subject; and must also collect the king's rents within his bailiwick, if commanded by process from the exchequer. *Dalt. c. 9.*

Accountable to
the king of all
farms, &c. of
his county. But
for escheats, &c.
not unless they
come to his
hands.

As soon as he is made sheriff, he is accountable to the king, of all farms, rents, issues, and profits of the county, which run in account under the name of Vicontiels. But for the escheats of the green wax (out of the exchequer) and such others, (as for the fines and amerciaments set in any court upon offenders, issues lost for default of appearance, the king's debts, &c.) the sheriff is not chargeable as sheriff at the first, nor at any times after, nor to levy the same, except that the sums be *estreats del sommes* come to him out of the exchequer, and then, when he hath them, he is chargeable and accountable. *2 H. 7. 6. Dalt. 49.*

Sheriff not to
dispute the au-
thority of the
court.

As writs and process are directed to the sheriff, neither he, nor his officers, are to dispute the authority of the court, out of which they issue, but he and his officers, are at their peril, truly to execute the same; and that according to the command of the said writs, and hereunto they are sworn. *Dalt. 104.*

Obliged to do the
duty of his office.

The sheriff being obliged to execute every writ

And

and process issuing and directed to him by lawful authority, he is likewise obliged by the duty of his office to execute such process without favour, with the utmost expedition and secrecy; and as soon after he receives it as the nature of the thing will admit of; and herein, there cannot be a surer thing to go by, "*than a strict observance of what is enjoined by the writ*;" but, as on the one hand, he must not shew any favour, nor be guilty of any unreasonable delay; so, on the other hand, he must not be guilty of oppression, nor make use of other force, nor greater violence than the thing requires. *Dalt. 109.*

Not to shew favour, nor be guilty of oppression.

The sheriff is an officer of that eminence, confidence, and charge, that he ought to have all right pertaining to his office, and ought to be favoured in law, before any private person. *4 Co. 33.*

Ought to be favoured.

By the common law, he is the same officer to the court of king's bench, as the constable is to the justices of the peace. *Salk. 175. 2 Ld. Ray. 1195. Fortes. Rep. 129.*

He is the same officer to the court of king's bench, as the constable is to the justices.

If any sheriff, &c. who hath execution of process, be slain in doing his duty, it is murder in him who kills him, although there were not any former malice between them; and, if there is error in award of process in the mistake of one process for another; as a *capias* in debt against a peer, and an officer be slain in the execution thereof, the defendant shall not have advantage of such error, no more than a sheriff who suffers a prisoner to escape, shall take any advantage of error thereby. And, in this case, there needs not a special indictment to be drawn; but a general indictment, that such a party of his malice aforethought struck, &c. for the law presumes malice, though none be proved; so it is, if any shall come in aid of them. And an officer, if he be resisted, is not bound to fly to the wall, as other subjects are. *Cro. Jac. 280. pl. 10. 9 Rep. 66.*

Killing of the sheriff in doing his duty, is murder.

No need of special indictment.

Every man is bound by the common law to assist, not only the sheriff in his office for the execution

Every man is bound to assist

Before he uses
force, &c.

execution of the king's writs according to law; but also his bailiff that hath the sheriff's warrant in that behalf, hath the same authority which his master hath: For the sheriff cannot do all himself, and if they do it not, being required, they shall be fined and imprisoned. 2 *Inst.* 193. But before the sheriff uses force, he ought to demand the goods to be delivered, for force ought to follow, not precede the law. *Ibid.*

Sheriff guilty of
homicide if he
does not observe
the order of law
in putting a man
to death.

Though the sheriff be so much favoured and respected in the law, and in the very execution of criminals; yet he shall be guilty of homicide, for not observing the order of law in putting a condemned man to death. 3 *Inst.* c. 7. p. 52. *H. H. P. C.* 433. 454. 456. *Foss. Cr. Law.* 267. 25 *Geo.* 2. c. 37.

If he seizes goods
pays part, and
goes out of of-
fice he may sell
without vend,
expon.

If the sheriff seize goods in his hands to the value of the debt, and pays part, and is discharged from his office without having sold the rest of the goods, or having returned his writ, that notwithstanding such discharge, and without any writ of *venditioni exponas*, he may sell the goods remaining in his hands, and such sale and execution shall be good by force of the writ of *fi. fa.* *Roll. Abr.* 893. *Salk.* 323. *Cro. Jac.* 73. *Mod.* 557.

No remedy
against sheriff on
his office being
determined but
by distringas af-
ter a return ot,
&c.

The sheriff sold goods upon a *fi. fa.* and upon a *vend. expon.* he returned, that he could not find buyers, then his office determined, and he still detained the goods in his hands; and it was said, the plaintiff had no other remedy against the old sheriff, but to have issues upon him. *Latch.* 117.

Where party
paid the money
to the old sheriff
discharged, &c.

If money be paid to the old sheriff, and he is discharged before the return of the writ, the party shall not be compelled to pay it again; and the plaintiff may have his remedy against the antient sheriff, if he will. *Cro. Eliz.* 208, 209. *pl.* 4. *Sav.* 123. *pl.* 192. *Ander.* 247. *pl.* 260.

If the writ com-
mands the she-
riff to go in per-
son, and he re-
turn and file it
that he has so

In all cases where the writ commands the sheriff to go in person, there the writ is his commission, from which he cannot deviate; but if the sheriff returns that he was there in person, and this return be received and filed, then any information to the

the contrary comes too late, because by the filing it is become a matter of record, against which no averment in *pais* lies, neither can the party have error upon the return. *Dalt.* 34. *Cro. Eliz.* 9, 10. *pl.* 1.

done good, tho' he did not attend.

Though it be the duty of the sheriff, &c. having the execution of the king's writs, and being resisted in endeavouring to execute the same, to raise such a power as may effectually enable them to overpower any such resistance; yet, it is said, not to be lawful for them to raise a force for the execution of a *civil process*, unless they find a resistance; and it is certain, that they are highly punishable for using any needless outrage or violence therein. *3 Inst.* 161. *2 Inst.* 193. *Hob.* 62. 264.

The duty of the sheriff to execute writs, but not to use force or violence, unless they find resistance.

The ministerial authority, duty or office of the sheriff, consists principally of these things, as laid down by *Dalton*, c. 5. p. 36.

1. Truly to keep the king's rights of his crown, within his county, *sc.* the king's lands, franchises, suits, rents and all other things that belong to the crown.

2. Truly to gather (and bring into the exchequer) the profits and monies due to the king within his county or bailiwick: *sc.* the king's rents, farms, debts, issues, amerciaments, fines and forfeitures.

3. To seize to the king's use the goods of felons attainted and of fugitives, of persons outlawed, treasure trove, waived goods, &c. deodands, estrays, wrecks of the sea, whales, escheats, wards, and lands of idiots.

4. Truly to accomplish and put in execution all manner of writs, process, judgments, executions, commandments, and precepts directed to him from any of the king's courts, which are to be executed within his county, duly to return all such writs, &c. to impanel juries, and to return them.

5. To be attendant upon the judges in their circuits, &c. and to execute all their lawful commandments.

6. To assist the justice of peace in his county, &c.

In some cases } To join with them.
 } To attend them.
 } To execute their precepts.

7. To

Under-sheriff.

7. To execute the precepts of commissioners of jewers, and other commissioners.

8. To execute the precepts of escheators and coroners.

9. To assist the ordinary in suppressing heresies.

10. Duly to keep his courts, &c.

His } Tourne, in this the sheriff is a judge of record, and so hath a judicial power.
County or shire court, which in some cases also is a court of record.

11. To proclaim certain statutes, &c.

12. To make purveyances for the king in some cases.

And all these the sheriff is to do his best endeavour for the keeping and preserving thereof, so far as belongs to his office. *Stamf.* 74. 75.

To execute these various offices, the sheriff has under him many inferior officers, viz. an under-sheriff, bailiffs, and goalers; who must neither buy, sell, nor farm their offices, on forfeiture of 500*l.*
3. Geo. 1. c. 15.

Under-sheriff.

Under-sheriff.

Hob. 13.

AS it is impossible the high-sheriff can himself personally execute every branch and thing belonging to his office, and as the law from the necessity of the thing, and in furtherance of justice, allows him to make a deputy; hence it is necessary, that such deputy should in all things, in which the high-sheriff's personal presence is not required, have the same power with the sheriff himself; and as by the nomination, the sheriff implicitly confers on him a power of doing all such offices as he himself could execute, and which may be transferred by the law; it is likewise held, that the deputy's authority is by law so equal with the principal's, that any condition, covenant, or other bargain to restrain it, is void; and therefore it is now universally agreed, that the under-sheriff may make bills of sale upon executions, assign bail bonds, make returns to writs, and in general, do every thing that

that the *sheriff himself can do*. He is appointed by deed, which is afterwards filed in the king's remembrancer's office in the exchequer. *Hob. 12, 3. Salk. 95.*

The high sheriff by law is answerable for the conduct of his under-sheriff, yet he is not to be punished criminally for his acts, nor to be imprisoned, nor indicted for his misdemeanors. *Dalt. 3. Latch. 187.*

High-sheriff answerable.

It appears that the sheriff of antient time had his under-sheriff. *Hob. 13. Stat. Westm. 1. 15. Inst. 191.*

Anciently appointed under-sheriff.

In antient time he was called *sub-vice comes*. *3 Ed. 1. c. 39.* And in stat. 11 H. 7. c. 15. he is called the *shire clerk*, 9 Co. 49, or the clerk of the county. *Dyer 355.* And yet the word *shire-clerk*, is sometimes taken to be the under-sheriff, sometimes for a clerk in the county court deputy to the under-sheriff. *Dalt. 455.*

Under-sheriff called sub-vice.

He may constitute him at his will, and remove him when he pleases. *Hob. 13.* So tho' he make him irrevocable, yet he may remove him at pleasure; for he is only his deputy. *Ibid.* And it is said, that he need not make an under-sheriff, for he may exercise the office himself. *Ibid.* If he makes an under-sheriff, he may take a bond or covenant to indemnify him from escapes. *Ibid. 14.*

May remove him

But he cannot enable him to do a thing which the sheriff himself ought to do in person. As to execute a writ of waste, *redisseisin*, partition, dower, &c. 6 Co. 12. *Hob. 13. Dalt. 34. Jenk. 181.*

Need not make an under-sheriff.

May take bond, &c.

Cannot enable under-sheriff to do that which he is to do in person.

2 Inst. 390.

4 Co. 65. *Dyer 204.*

For in all cases where the writ commands the sheriff to go in person, there the writ is his commission, from which he cannot deviate. *Dalt. 34.*

Before the new sheriff return any writ into the courts of *chancery*, *king's-bench*, *common pleas*, or *exchequer*, he ought to make and have an attorney, or deputy of record, there to receive all manner of writs and warrants to be delivered to them, and if any such sheriff shall do the contrary, he shall forfeit 40 l. to the king and informer, for every such default

Before the new sheriff return any new writ in chancery, &c. to appoint deputy on record.

default, and treble damages to the party grieved.
23 H. 6. c. 10.

King's bench,
order to appoint
deputies.

Every sheriff shall make and cause to be entered on record a sufficient deputy to receive all manner of writs and process under the pains and penalties mentioned in the above statute, and that sheriffs or their deputies shall give their personal attendance in *Westminster-hall* in term time. E. 15 Car. 2. K. B. Each deputy yearly before *Hilary* term, have his name and place of his residence in *London* or *Westminster*, set and continued up in tables, in the office of the prothonotary. R. M. 1654. C. P.

Exchequer order
to appoint de-
puty.

By an order in the court of exchequer, all sheriffs shall assign their able attorney and deputy in that court, sitting the court, to attend the court and receive and return all writs, &c. And every sheriff on his giving a recognizance, shall deliver to the clerk in the remembrancer's office the name of the attorney or deputy assigned. Ord. and Rules in Ex. R. 45. p. 20.

C. P. same order.

So by a rule in the C. B. M. 1654. The sheriff shall have a deputy in court to receive and return writs, whose name and place of abode in *London* or *Westminster*, shall yearly before *Hilary* term be set up in the clerk of the warrants office.

Sheriffs of *Wales*
and counties pa-
latine, to appoint
attornies in the
king's courts.

Also every sheriff of every of the *twelve counties*, of *Wales* and of the *counties palatine of Lancaster*, *Chester* and *city of Chester*, shall have in every of the courts of *king's-bench*, and *common pleas*, one sufficient deputy at the least, to receive all writs directed to such sheriff, for whom the same deputy or deputies shall be appointed, in like manner and form, and upon like pains, as by the laws and statutes of this realm, other sheriffs of other shires within this realm of *England* be bound to have, in either of the same courts. 23 H. 6. c. 9. 1 Ed. 6. c. 10. 5 Ed. 6. c. 26.

Durham.

The *Bishop of Durham*, and during the vacation of the said bishoprick, the chancellor of the said county palatine for the time being, shall have one sufficient deputy at least, in the said courts of the
king's-

king's-bench, and common-pleas, to receive all writs of proclamation, directed to such bishop or chancellor. 31 *El. c. 9.* under penalty of 40 *l.*

It has been already said, that the under-sheriff usually performs all the duties of the office; a very few only excepted, where the personal presence of the high-sheriff is necessary. But no under-sheriff, nor sheriff's clerk, shall abide in his office above one year, 42 *Ed. 3. c. 9.* and if he does, by stat. 23 *H. 6. c. 8.* he forfeits 200 *l.* a very large penalty in those early days, (except the under-sheriff and officers within *London* and such as are heritable.) And no under-sheriff or sheriff's officer shall practice as an attorney, during the time he continues in such office. 1 *H. 5. c. 4.* and by rule *Mic. 1654. f. 1. K. B.* if he does, he is to be expelled from the employment of an attorney, and not to be re-admitted, for this would be a great inlet to partiality and oppression. But these salutary regulations are shamefully evaded, by practicing in the names of other attornies, and putting in sham deputies by way of nominal under-sheriffs: by reason of which, says *Dalton*, c. 115. p. 454. the under-sheriffs, sheriffs clerks, and bailiffs, grow so cunning in their several places, that they are able to deceive, and it may well be feared, that many of them do deceive, both the king, the high-sheriff, and the county.

By stat. 3 *Geo. 1. c. 15.* The following oath shall be taken by all under-sheriffs of any county or counties in *South Britain*, (except the counties of *Wales*, and county palatine of *Chester*) before they enter upon the execution of their offices respectively, *videlicet.*

" I A. B. do swear, that I will well and truly
 " serve the king's majesty in the office of under-sheriff
 " of the county of _____, and promote his
 " majesty's profit in all things that belong to the crown;
 " I will not assent to decrease, lessen or conceal the
 " king's rights, or the rights of his franchises; and
 " whensoever I shall have knowledge that the rights of
 " the _____

Oath of the under-sheriff.

" the crown are concealed or withdrawn, be it in lands,
 " rents, franchises, suits, or services, or in any other
 " matter or thing, I will do my utmost to make them
 " be restored to the crown again; and if I may not do
 " it of myself, I will certify and inform some of his
 " majesty's judges thereof; I will not respite or delay
 " to levy the king's debts for any gift, promise, reward
 " or favor, when I may raise the same without great
 " grievance to the debtors; I will do right as well to
 " poor as to rich, in all things belonging to my office; I
 " will do no wrong to any man for any gift, reward or
 " promise, nor for favor or hatred; I will disturb no
 " man's right, and will truly and faithfully acquit at
 " the exchequer all those of whom I shall receive any
 " debt, duties or sums of money belonging to the
 " crown: I will take nothing whereby the king may
 " lose, or whereby his right may be disturbed, injured
 " or delayed; I will truly return and truly serve all
 " the king's writs to the best of my skill and
 " knowledge; I will truly set and return reasonable
 " and due issues of them that be within my bailiwick,
 " according to their estates and circumstances; and
 " make due panels of persons able and sufficient, and
 " not suspected, or procured, as is appointed by the
 " statutes of this realm; I have not bought, pur-
 " chased or taken to farm, or contracted for, promised or
 " given any consideration whatsoever, by myself, or any
 " other person for me or for my use, directly or indi-
 " rectly, to any person or persons whatsoever, for the
 " office of under-sheriff of the county of
 " which I am now to enter upon and enjoy, nor for
 " the profits of the same, nor for any bailiwick there-
 " of, or any other place or office belonging thereunto;
 " I have not sold or contracted for, or let to farm, nor
 " have I granted or promised, for reward or benefit,
 " by myself or any other person for me, or for my
 " use, directly or indirectly, any bailiwick thereof, or
 " any other place or office belonging thereunto; I will
 " truly and diligently execute the good laws and statutes
 " of this realm; and in all things well and truly be-
 " have myself in my said office for his majesty's advan-
 " tage,

age, and for the good of his subjects, and discharge my whole duty according to the best of my skill and power. So help me God."

"Which said oath is ordered and enacted to be administered and given by such commissioners as shall be named and authorised to administer the foregoing oath to the high sheriff in the country, when and so often as a *commission* or *de-dimus* shall be sued forth of the proper court for that purpose, or by the barons of the said court, or one of them, when the said sheriffs desire to be sworn in town." *f. 11.*

How, and by whom to be administered.

He must also take the oaths of *allegiance*, *supremacy* and *abjuration*, receive the *sacrament*, and subscribe the *declaration* against *transubstantiation*. And no under-sheriff shall inter-meddle with his office before he hath taken the said oath as afore-said. *stat. 27 Eliz. c. 12.* on pain to forfeit 40*l.* one half to the queen and the other to the informer; to be sued for by bill, plaint, or information in any of the queen's courts.

Must take the oaths of allegiance.

The oath previous to this, is mentioned in the 27 of *Eliz. c. 12.* Before this statute the under-sheriff was never sworn. *1 Roll. Rep. 274.*

The under-sheriff hath not, nor ought to have, any estate or interest in the office itself; neither may he do any thing in his own name, *Salk. 96.* but only in the name of the high sheriff, who is answerable for him, because the writs are directed to the high-sheriff.

To have no estate or interest in the office.

Dalt. c. 2. p. 20. says, If the high sheriff will sleep quietly, and take his repose in safety, he shall do well and wisely to look for, and to take good security from his under-sheriff, before he do trust him with his office, which security is commonly by bonds and covenants, taken by the high-sheriff, of the under-sheriff and his friends.

Caution to sheriffs to take security.

1. To save the said high sheriff harmless.

2. To make account in the exchequer,

and

Procure the high sheriff's discharge.

Condition of bond.

I

3. To

Me advise de
cette covent.

Secondaries of
London are un-
der-sheriffs.

No sheriff of
London to take
presents of un-
der-sheriffs.

Sheriffs and un-
der-sheriffs to
make out war-
rants.

Sheriffs deliver-
ing out warrants
before they have

3. To return juries with the privy of the sheriff.
4. To execute no process of weight, without the sheriff's privy.
5. To accompt to the sheriff and attend him.
6. To be ready to attend the sheriff.
7. For his good behaviour in his office.
8. To take or use no extortion.
9. To give attendance at the king's courts.

The sheriffs of London, have two secondaries, who act as under-sheriffs of London, and each sheriff hath an office wherein the business is transacted, the one called the *Wood-street Compter*, the other the *Poultry Compter*.

They are the principal officers and next to the sheriffs; and the business transacted by them is, the granting of warrants on all writs issued from the courts above, impanel juries to appear in those courts, and in the court of session, and attend the sheriffs when required.

The secondaries have purchased their places of the city of London time immemorial.

No sheriff of London and Middlesex shall take any sum or present for the execution of the place of under-sheriff, nor oblige them to be at any expence in relation thereto, which has been usually borne by the high-sheriff; except the rewards given by any act for apprehending highwaymen, clippers, coiners, and house-breakers, and the fees for passing the high-sheriff's accounts in the exchequer, and such other disbursements as have been customarily sustained by the under-sheriff. *St. 5 Ann. c. 31.*

Sheriffs and under-sheriffs shall receive all manner of writs in any place, and at all times within their county, when and wheresoever they shall be delivered them, without taking of any thing other than such fees, as the law alloweth, and shall make thereof warrant.

“ If any high-sheriff, under-sheriff, or his or their deputy or deputies their clerks or agents, shall at any time or times after the first of August,

1720, make or cause to be made or delivered out to any person or persons whomsoever, any warrant or warrants, either blank or filled up in part or in all, before they or some of them shall actually have in their custody the respective writs upon which such warrants should and ought to issue, that then the several persons so offending, and every of them, shall forfeit 10*l*. 6 Geo. 1. c. 21. s. 63." That every warrant to be made out or to issue upon any writ or writs, shall have the same day and year plainly and distinctly set down thereon, as shall be so set down on the writ itself, under forfeiture of 10*l*. to be paid by the person who shall write, fill up, or deliver out, such warrant, s. 64.

the writs in their custody, shall forfeit 10*l*.

Every warrant shall have the day and year set down on forfeiture of 10*l*.

Counties in England and Wales.

In England 39.

Bedford	Monmouth
Berks	Norfolk
Bucks	Northampton
Cambridge	Northumberland
Cornwall	Nottingham
Cumberland	Oxon
Derby	Rutland
Devon	Salop
Dorset	Somerset
Durham	Stafford
Essex	Suffolk
Gloucester	Surrey
Hereford	Sussex
Hertford	Southampton
Huntingdon	Warwick
Kent	Westmoreland
Lancaster	Worcester
Leicester	Wilts
Lincoln	York.
Middlesex	

F

In

In *Wales* 12.

<i>Anglesey</i>	<i>Flint</i>
<i>Brecon</i>	<i>Glamorgan</i>
<i>Cardigan</i>	<i>Merioneth</i>
<i>Carmarthen</i>	<i>Montgomery</i>
<i>Caernarvon</i>	<i>Pembroke</i>
<i>Denbigh</i>	<i>Radnor.</i>

The *Counties Palatine*.

<i>Lancaster</i>	and of
<i>Chester</i>	<i>Ely.</i>
<i>Durham</i>	

The *Cinque Ports*, 5.

<i>Dover</i>	<i>Hastings</i>
<i>Sandwich</i>	and
<i>Romney</i>	<i>Hythe.</i>

To which *Winchelsea* and *Rye* are added.

In the time of *Edward the Confessor*, there were but 3 ports, *Dover*, *Sandwich* and *Romney*, but in the time of *William the Conqueror*, *Hastings* and *Hythe* were added, 4 *Inst.* 222. 2 *Inst.* 556, and 1. *John.* *Winchelsea* and *Rye*.

The warden of the cinque ports is an officer, who has been appointed time out of mind, &c. for the custody of the ports. 4 *Inst.* 223. And he is constable of the castle of *Dover.* *Ibid.*

The constable of the castle of *Dover*, executes all writs in the *cinque ports*.

There be also counties corporate; and these be certain cities or ancient boroughs, upon which kings formerly have bestowed such extraordinary liberties; as the cities of *London*, *York*, and *Chester*, *Canterbury*, *Kingston upon Hull*, *Litchfield*, &c.

The

Under-sheriff.

67

The cities and towns in England, which have a sheriff or sheriffs, are as follow :

Cities of

Bristol		Canterbury	} One sheriff.
Coventry		Exeter	
Chester		Litchfield and	
York		Cirencester	
Gloucester	} Have two sheriffs.	Towns of	
Lincoln		Kingston upon Hull	} One sheriff.
London		Southampton	
Norwich and		Poole and	
Town of Nottingham		Newcastle up. Tyne	

If an action is brought against the under-sheriff for a breach of duty in the office of sheriff, the action must be brought against the high-sheriff, as for an act done by him, and not against the under-sheriff; and if it proceeds from a fault of the under-sheriff, or bailiff, that is a matter to be settled between them and the high-sheriff. *Cameron & al. v. Reynolds. Cow. Rep. 403.*

All writs and process directed to the sheriff, are usually delivered to the under-sheriff, to make out warrants thereon to the bailiff, in the high-sheriff's name; or he may make out such warrant to any stranger. If the sheriff make an under-sheriff, of necessary consequence, he gives him power to make bailiffs and precepts, without acquainting him therewith, and this he can do by virtue of his deputation; 12 *Mod.* 468. for he cannot abridge him of his power, no more than the king can the sheriff himself. 2 *Brownl.* 281. *Hob.* 13. *Cro. Eliz.* 440.

If a writ be substracted by a sheriff's deputy, it is said the deputy himself may be punished. *Leon.* 146. *pl.* 203. *Cro. Eliz.* 175. *pl.* 1. unless bailed; then he may give an extract for the purpose of putting in bail.

It is impossible for the high-sheriff, and under-sheriff, to execute all writs and process directed to them ;

All actions for breach of duty of the office of sheriff, must be brought against the high-sheriff, tho' by default of the under-sheriff.

Writs delivered now to the under sheriff, who makes out warrants.

Not to grant an extract of writ till bailed.

High-sheriff may appoint bailiffs to execute warrants

them; therefore the high-sheriff may, for that purpose, empower a *bailiff* in each hundred, to execute such writs, and if he pleases may appoint a *special bailiff* on any certain occasion; *Dalt.* 103. *Kielway* 86. and he may take security from them, as he is answerable for their acts. *Stil.* 18. But he cannot abridge them of their power. 2 *Brownl.* 283.

Bailiffs.

Derivation of the word.

BAILIFF in a strict sense, denotes an officer appointed for the administration of justice, within a certain district, called a *bailiwick*—The word is also written *baile*, *baily*, *bayly*, *baylie*, and *bailiff*, in Latin *ballivus*. It is formed from the French *baillis*, of *bail*, an old word, denoting a *guardian*, or *governor* of a youth, originally derived from the Latin *bajulus*, which signified the same.

Originally a kind of commissioners

Pasquier maintains that *bailiffs* were originally a kind of commissioners, or judge's delegate, sent into the provinces to examine whether or no justice were well distributed by the courts, who were then the ordinary judges. *Loyseau*, with more probability, refers the origin of bailiffs to the usurpation and idleness of the great lords, who, having got the administration of justice into their own hands, and being weary of the burden, turned it over to their deputies, whom they called *bailiffs*.

Origin of bailiffs was owing to the idleness of great lords.

Had at first the superintendence of arms, &c.

These bailiffs had at first, the superintendence of arms, of justice, and of the finances; but abusing their power, they were by degrees stripped of it, and the greatest part of their authority transferred to their lieutenants, who were to be men of the long robe. It is true, in *France* they have still some prerogatives, as being reputed the heads of their respective districts: in their name, justice is administered,

In *France* justice is administered in their names.

ministered, contracts and other deeds passed, and to them is committed the command of the militia.

From these it was that the English *bailiffs* originally took both their name, and their office: for as the French have 8 parliaments, which are supreme courts, whence no appeal lies, within the precincts of the several parliaments, or provinces, and in which justice is administered by *bailiffs*, at least by their lieutenants: so in *England* are several counties wherein justice was administered by a *viscount* or *sheriff*, who appear likewise to have been called *bailiff*; and his district or county, *bailiwick*. Further, the counties were again subdivided into hundreds; within which it is manifest justice was anciently rendered by officers called *bailiffs*. But those hundred courts are now swallowed up by the county courts, certain franchises alone excepted, and the *bailiffs* name and office is grown into such contempt, at least these *bailiffs* of hundreds, that they are now no more than bare messengers, and mandatories within their liberties, to serve writs, and such menial offices.

From these English bailiffs took their name.

No more now than bare messengers.

Bailiffs are of two kinds, viz. *bailiffs errant* or *itinerant*, and *bailiffs of franchises*. Two kinds.

Bailiffs errant, are those whom the sheriff appoints to go up and down the county to serve writs and warrants, summon county courts, sessions, assizes, &c.

Bailiff's errant.

Lord Coke says *bayly* or *bailiff*, is an old Saxon word, which signifies a *keeper* or *protector*; and though there be several officers called *bailiffs*, whose offices and employments are quite different from each other, yet doth something of keeping or protection belong to them all. Hence the sheriff is considered as bailiff to the crown; and his county which he hath the care of, and in which he is to execute the king's writs, is called his *bailiwick*; also his officers, who by his precept execute writs, are called *bailiffs*. *Co. Litt. 61. b.*

Lord Coke's definition of a bailiff.

Bailiffs or sheriffs officers, are either bailiffs of hundreds, or special bailiffs. Bailiffs of hundreds

Another definition.

are officers appointed over those respective districts by the sheriffs, to collect fines therein ; to summon juries ; to attend the judges and justices at the assizes, and quarter sessions ; and also to execute writs and process in the several hundreds. But as these are generally plain men, and not thoroughly skilful in this latter part of their office, that of serving writs, and making arrests and executions, it is now usual to join special bailiffs with them ; who are generally mean persons employed by the sheriffs on account only of their adroitness, and dexterity in hunting and seizing their prey. The sheriffs being answerable for the misdemeanors of their bailiffs, they are therefore usually bound in an obligation for the due execution of their office, and thence are called *bound bailiffs* ; which the common people have corrupted into a much more homely appellation.

Serjeant at mace
for London to
execute process.

There are 36 serjeants at mace in *London*, who may be termed bailiffs ; for they execute all warrants granted by the sheriffs on mesne process and executions in *London*, and perform the same business as bailiffs errant. These serjeants at mace have each a yeoman, to attend them on the execution of process, &c. and each serjeant gives 800*l.* security to the sheriffs for the faithful discharge of their office.

Dalton's definition.

Dalton says, The bailiffs of hundreds, called also bailiffs errants, and in our law, or vulgar Latin called *ballivi itinerantes* (*id est* going hither and thither in the county to serve or execute writs, to summon the assizes, the quarter sessions and the like) are made and appointed by the high-sheriff. And these bailiffs should be such manner of persons, as do know each man's person, and land, in the hundred, and their ability to serve upon inquests, that they may the better summon, or distrain them to appear, &c. when appointed.

Sheriffs answer-
able.

But for that sheriffs may not let their bailiwicks to farm, therefore when they put in bailiffs, they

be but as under-bailiffs to the king, and the sheriff is the high-bailiff, and the other the sheriff's servants, and therefore he shall answer for them if they offend in their office. *Dr. & St. 136.* By Stat. 14 *Ed. 3. c. 9.* Sheriffs shall appoint such bailiffs for whom they will answer. And so shall those lords which have hundreds and wapentakes in fee. No sheriff's bailiffs shall be attorney in the king's courts during the time he is in office. *1 H. 5. c. 4. R. M. 1654. K. B.*

Lords that have hundreds shall appoint those for whom they will answer.

The sheriff's bailiffs are to take the oaths appointed by stat. 27 *Eliz. c. 12.* they are to be sworn to the supremacy, and for the exercise of their office under the penalty of 40*l.* and if they commit any act contrary to their oath, they shall lose treble damages. But special bailiffs are not to take the oaths by stat. 27 *Eliz. Crom, 26.*

Bailiffs to take oaths, &c.

These bailiffs of hundreds shall be true and credible persons, and shall have sufficient lands in the same shire, whereof to answer the king and his people, in case that any man shall complain against them, and so that they shall not need to use extortion. *9 Ed. 2. 2 Ed. 3. c. 4. 4 Ed. 3. c. 9. 5 Ed. 3. c. 4. 14 Ed. 3. c. 9.* Now security is given.

Bailiffs of hundreds to be true and credible persons.

No bailiff of any hundred shall lease his office to any other in farm or otherwise. *9 E. 3.*

Not to lease the office.

Of Liberties and Franchises.

Bailiff of liberty,
what.

A Bailiff of a liberty is one who hath the same jurisdiction with the sheriff's bailiff, granted to him by the lord of a liberty or franchise.

A franchise is a royal privilege in the hands of a subject, *Finch*. 38. and such are every liberty, or commodity which have creation at the first, by the special grant of the king, or of their own natures appertaining to the king, are given and granted to a common person, to have thereof some estate of inheritance, or for life, &c. *Ibid*.

When liberties,
&c. began.

These liberties and franchises began with the lords purchasing the bailiwicks of the hundreds, sometimes for years, for life, or in fee, at a certain rate in fee-farm; and for this, the lords had the court leet, the assizes of bread and beer, and the amends, *viz.* the fines for the breach of any of the articles examinable in the leet, and they likewise had the return of writs.

Franchises proving
inconvenient,
sheriff could not
enter.

These franchises proving very inconvenient, because the sheriff could not enter into them to execute the king's writs, but was to direct them to the bailiff of the liberty, who had the execution of all writs, the statute of *Westminster*, 2. c. 29. enacts, "That if such bailiffs gave no answer to the sheriff, the court should grant a special warrant with a non omittas, which authorises the sheriff to enter the franchise."

If bailiffs give
no answer, a non
omittas to issue.

They cannot ar-
rest, without
warrant from
sheriff.

Bailiffs of franchises who have return of writs, cannot arrest a man without warrant or precept to them made by the sheriff, upon, or by force of the king's writ in the hands of the sheriff. *Dalt.* 459. but is duly to execute all precepts directed to him from the sheriff, and to make due return thereof to him. *Crompt.* 57. If he take bail, it is to be in the name of the sheriff, stat. 23 *H. 6.* c. 10. And he is to have the same fees as the sheriffs and their officers, *Dalt.* 460. They are to attend the justices

If bailiff take
bail, how.

To attend the
judges, &c.

justices of assize, goal delivery, and justices of the peace, 27 H. 8. c. 2.

The bailiff of a franchise cannot enter into the Guildable; and if he does, it is erroneous, because he has no authority out of the franchise, any more than the sheriff has in another county, *Finch*. 54. 11 H. 4. 9. *Bro. Off.* 35.

No authority out of the franchise.

If the bailiff of a franchise had made an insufficient return, which the sheriff returned to the court, they formerly held the sheriff was answerable, and not the bailiff, for an insufficient return, is no return, and the bailiff making no return, the sheriff ought to have said, *nullum dedit mihi responsum*; but this is altered by 27 H. 8. cap. 24. which says, "that the amercement for insufficient returns made by bailiffs of franchises, shall be set on the bailiff's head, and not on the sheriff's."

Formerly sheriff answerable for insufficient return of bailiff.

But now the bailiff.

If the bailiff of a liberty dies after he has returned, *cepi*, a *distingas* issues against his successor, because he takes it up under the return of his predecessor, *Brow. Ret. Brev.* 99. 14 E. 4. 5.

If bailiff dies.

Bailiff of a franchise, is to take the oaths of Supremacy, and of office. *Dalt.* 459.

To take the oaths

There are also bailiffs of fee, who are officers of fee within their jurisdiction or precinct; and for the execution of process there, the sheriff shall not write or send his precept to these bailiffs, as to a bailiff of a franchise, but as to the bailiff of Guildable; and the sheriff shall return his answer, as if the sheriff himself had served the process, *Br. Process*, 98. and the return also shall be in the name of the sheriff. *Dalt.* 459.

Bailiffs of fee.

The Bailiff's Duty.

Bailiff's duty.

THE sheriff or other officer to whom any writ or warrant shall be directed and delivered, ought with all speed and secrecy, to execute his said writ or warrant, according as the same commands him: Besides, he is bound to pursue the effect of his warrant, in every behalf, otherwise his warrant will not excuse him.

A sworn and known officer need not shew his warrant.

A sworn and known officer, (be he sheriff, under-sheriff, bailiff or serjeant,) need not shew his warrant or writ, when he comes to serve it upon any man's person or goods, although the party demands it: But a special bailiff, or other person, who is no sworn and known officer, must shew their warrant to the party, -if he demands it, or otherwise the party may make resistance, and need not to obey it, 9 Co. 69. 21 H. 7. 23. and 37. 8 E. 4. 14. 14 H. 7. 9. And it behoves every bailiff to keep his warrant, so that he may justify the imprisonment, 10 Co. 92.

He ought to declare the contents

Although a sworn and known officer need not shew his warrant, yet, upon the arrest, he ought to declare the contents thereof, (*viz. at whose suit, for what cause, out of what court, and when returnable;*) to the end, that if it be upon an execution, the party may pay the money, and so free his body from imprisonment; and, if it be upon mesne process, that the party may agree with the other, or else, that he may put in sureties and bail for his appearance, according to law, and to know the day of his appearance, 9 Co. 68, 69. & 6 Co. 54.

Who is a known bailiff.

Where our law books or statutes do speak of a known bailiff or officer, they are not to be understood; (neither is it needful) that such bailiff or officer be known to the party, who is to be arrested; but if he be so commonly known, it is sufficient, 9 Co. 69. (*b.*)

And

And an officer gives notice what he is, when he says to the party, "*I arrest you in the king's name*;" and in such case, the party at his peril ought to obey him, though he knows him not to be an officer; if he have no lawful warrant, the party may have his action, 9 Co. 69.

Officer gives notice what he is, when he says, "*I arrest you, &c.*"

If the sheriff or officer comes to arrest a man, and he flies, the officer may pursue him, and take him again, though in another county, but may not beat, strike, or assault him, for that he was not arrested; but if arrested, and then flies, and draws any weapon, the officer may justify the assault, and taking him again, 2 E. 4. 7.

If arrest made, and party flies, may pursue,

If any officer arrests a man before he hath a warrant, and afterwards procures one (or a warrant comes after him) to arrest the party for the same cause, yet the first arrest was wrongful, and the party may have his action, *Brown*. 8.

If he arrests without warrant.

A bailiff of a hundred, may execute a writ out of the hundred, where he is bailiff, for he is bailiff all the county over, *Lil. Abr.* 266.

Bailiff of a hundred, bailiff all the county over.

No bailiff or sheriff's officer shall presume to exact or take from any person being in his custody, by arrest, any warrant to acknowledge a judgment, but in the presence of an attorney for the defendant, which attorney shall then subscribe his name thereunto upon pain of being severely punished for so doing, *R. H.* 14 & 15 *Car.* 2. *C. P. Hil.* 14 & 15 *Car.* 2. *K. B.*

Not to take a warrant of attorney.

No sheriff's officer, bailiff, or other person concerned in the execution of process, shall be permitted or suffered to become bail in any action or suit depending in the courts above. *Rule M.* 6 *Geo.* 2. *K. B. H.* 7 *Geo.* 2. *C. P.* 2 *Str.* 890. *Suppl. to Barnes* 9, 10.

Not to become bail.

The bailiff as soon as he has executed the warrant, must give the sheriff an answer to the same, so that he may be ready to certify to the court, how, and in what manner the same hath been executed, if called on,

Must as soon as he executes his warrant, give an answer.

A bailiff

Not to enter a liberty, without a *non omittas*.

A bailiff of a hundred, is not to enter a liberty without a warrant on a *non omittas propter aliquam libertatem*, for the lord may have his action on the case against him. *Fitz.* 95. 6. *Dalt.* 187. he may enter on a *quo minus* out of the exchequer, or wheresoever the king is a party, 5 *Rep.* 92. For where the king is a party, no franchise shall be allowed. *Dalt.* 463. Every writ for the king is a *non omittas* in law of itself, 41 *Aff.* 17.

Caution to bailiffs how they execute writs, &c.

As bailiffs are officers who are to execute the king's writs, they must be cautious how they act, because, when they use needless force, violence and terror in making an arrest, or where they break open doors, where by law they cannot, and have no plausible excuse for so doing; where they treat persons basely and inhumanly, or keep them in custody until they consent to pay money for their deliverance; or for taking money for taking bail, or for making an arrest without authority, by force of a blank warrant, filled up with the name of a special bailiff, by the party himself, without the privity or subsequent agreement of the sheriff, &c. the court will grant an attachment. *Finch.* 237. *Hob.* 62. 263. 264. *Noy.* 101. *Moor* 770. pl. 1064. 2 *Roll. Abr.* 278. *Barnard* 259. 296. 2 *Burr* 926. see stat. 32 *Geo.* 2. c. 28. and more under title *arrest* on this head.

If the king dies, yet he may execute his warrant.

If any judicial writ or process in any court of record be awarded in the time of the precedent king, this by stat. 1 *Ed.* 6. c. 7. may be executed by the sheriff or his officer in the time of the succeeding prince, &c. 7 *Co.* 30, 31. *Dalt.* 109.

Goalers.

Goalers.

GOALERS are also servants of the sheriff, and he must be responsible for their conduct. Their business is to keep safely all such persons as are committed to them by lawful warrant; and

and if they suffer any such to escape, the sheriff shall answer it to the king, if it be a criminal matter; or in a civil case, to the party injured.

4 *Rep.* 34. 2 *Inst.* 592.

By statute 14. *E.* 3. c. 10. "The goals shall be rejoined to the sheriffs, and the sheriffs shall have the custody of the same as before; and they shall put in keepers for whom they shall answer."

Sheriffs to have the custody of goals.

By 19 *H.* 7. c. 10. "Every sheriff shall have the custody of the king's common goals in the county where he is sheriff, except goals whereof any persons, or body corporate, have the keeping of estate of inheritance. Provided, that no sheriff have the custody of the king's bench and marshalsea."

To have custody of goals in the county, except &c.

Every county hath two sorts of goals, one for prisoners by the sheriff taken for debt, and this the sheriff may appoint in any house, or where he pleases; the other is for breach of the peace and matter of the crown, which is the county goal.

Every county two goals.

Latch. 116. 1 *And.* 345.

By the 22 & 23 *Car.* 2. c. 20. f. 13. "It shall not be lawful for any sheriff or goaler to lodge prisoners for debt, and felons together in one room, but they shall be kept apart, upon pain that they that offend against this act, shall forfeit their office, and treble damages to the party grieved."

Prisoners for debt and felons, not to be together.

By the 1 *Ann.* c. 6. those taken on an escape warrant, are to be sent to the county goal.

Escape prisoners.

Though the sheriff may remove his goal from one place to another within his bailiwick, yet he must keep it and his prisoners within it, and not suffer them to go at large out of the prison, though he himself attends them. *Hob.* 202. *Latch.* 16. 1 *Sid.* 318.

Sheriffs must keep their prisoners in the goals.

By stat. 32 *Geo.* 2. c. 28. f. 5. Power is given to the lord chief justices of the king's bench, common pleas, and the lord chief baron of the exchequer, or any two of them, with the mayor and

Power given to settle table of fees for goalers.

two aldermen, or with three aldermen of *London* without the mayor, for the prisons within the said city; and the said lord chief justices and chief baron, or any two of them, with three justices of peace of the counties of *Middlesex* and *Surry*, respectively, for the prisons in the said counties respectively, to settle a table of fees to be taken by any goaler in *London*, or in *Middlesex* and *Surry*, where the same is not established, and where established to vary same as requires. And the justices of peace of every other county and place for the prisons of each county, are at any general or quarter session of the peace, to settle a table of fees, and to alter the same; which table of fees shall be signed by them. And the table of fees for the prisons (except *London*, *Middlesex*, and *Surry*) shall be confirmed and moderated by the justices of assize, and if within *Wales* or *Chester*, by the justices of great sessions, at the next assizes or great sessions next after the making or altering such table of fees.

Goalers to cause them to be hung up in public room.

Free resort to in the day time.

Goals for safe custody, and not for punishment.

Goaler shall forthwith, after the receipt thereof, or rules made for the better government of the prisons in *England*, cause the same to be hung up in some public room or place, and in a conspicuous manner in his prison; and it shall be incumbent on such goaler, to take care the same be kept up there, so as the prisoners may have free resort thereto, at seasonable times in the day time, without paying any thing for the same. And also a table of gifts and legacies (when transmitted) shall forthwith be hung up by the goaler, in a conspicuous manner in some public place in his prison, and where the prisoners may have free resort thereto, without fee, *s. 10.* And no keeper shall take of any prisoner for debt, damages, costs, or contempt any greater fees, shall forfeit to the party grieved, *50*l.** with treble costs by action of debt, &c. in any court of record at *Westminster*, *s. 12.*

Goals are for safe custody, and not for punishment, (unless on the criminal side) therefore prisoner

prisoners ought to be used with the *utmost humanity*, and not subjected to *other hardships*, than such as are *absolutely requisite* for the purpose of *confinement only*; though, what are so requisite, must too often be left to the discretion of the gaolers; who are frequently a merciless race of men, and, by being conversant in scenes of misery, steeled against any tender sensation. And, it appears in 2 *Inst.* 381. 3 *Inst.* 34. that it was formerly held, that the law would not justify gaolers in fettering a prisoner, unless when he was unruly, or had attempted an escape: This being the language of our antient law givers, "*custodes pœnam sibi commissorum non augeant, nec eos torqueant; sed omni sævitia remota, pietateque adhibita, judicia debite exequantur.*" *Fleta. l. 1. c. 26.*

of debtors, and prisoners ought to be used with humanity.

Goalers, merciless men,

No prisoner shall be put in irons, but such as have been apprehended for felony, or trespasses committed in parks or vivaries, and those who have been found in arrear upon account; nor shall any prisoner be punished or tortured in any other manner, than by law they ought, and that none disseize them whilst they are in prison, of any thing which belongs to them, *Britt. c. 11. f. 5.* 2 *Inst.* 316. 381. 3 *Inst.* 34. 39. And therefore, this liberty can be only intended where the officer hath just reason to fear an escape, as where the prisoner is unruly, or makes an attempt to that purpose; but otherwise, notwithstanding the common practice of gaolers, it seems altogether unwarrantable, and contrary to the mildness and humanity of the laws of *England*, by which gaolers are forbid to put their prisoners to any pain or torment. *H. H. P. C. 601.*

No prisoner to be put in irons, except, &c.

Liberty intended where the officer hath just reason.

If a prisoner's death be owing to cruel and oppressive usage on the part of the gaoler, or any officer of his, it will be deemed wilful murder in the party guilty; therefore, if a prisoner dies, whether by disease or accident, the coroner is to take inquisition of the death, and the gaoler must give notice to the coroner of such death.

If death be owing to cruelty.

A gaoler

What is deemed murder.

A gaoler knowing that a prisoner infected with the small pox, lodged in a certain room in the prison, confined another prisoner against his will in the same room. The second prisoner, who had not had the distemper, of which the gaoler had notice, caught the distemper, and died of it; this was held murder in the gaoler, 2 *Str.* 856.

Goaler cannot receive any person on the civil side without warrant.

A gaoler cannot receive any person on the civil side, without the officer's warrant to detain him; and, if he refuse to take him, and the prisoner escape, the gaoler shall not only answer the debt, (in case the sheriff is obliged to pay it) but be fined for such refusal. 4 *E.* 3. *c.* 10.

If escape gaoler may retake.

If one in prison for a debt make an escape, the gaoler, &c. may take him again. 3 *Co.* 44, and 52.

Goaler not to take bonds of prisoners.

Goalers cannot take obligations from their prisoners, to be true, for enlargement or meat and drink, if they do, such obligations are void. 10 *Co.* 100. *b.* *Plowd.* 68. 9 *Co.* 87. *b.* for the gaoler is in a manner bound to find victuals for his prisoners.

Sheriff may discharge gaoler at pleasure.

As the gaoler is but the sheriff's servant, therefore he may discharge him at his pleasure; and if he refuses to surrender up or quit possession of the goal, the sheriff may turn him out by force, as he may any private person; also they are each of them so far under the regulation of the court of king's bench, that they will compel the sheriffs to assign prisoners, &c. and goalers to surrender up goals, &c. *Reg.* 295.

If gaoler suffers escape, action to be brought against the sheriff.

If a gaoler suffers a prisoner to escape, the action must be brought against the sheriff; not against the gaoler; for an escape out of the gaoler's custody is by intendment of law, an escape out of the sheriff's custody. 2 *Lev.* 159. 2 *Jon.* 62. 2 *Mod.* 124. 5 *Mod.* 414, 416.

When actions are said to lie against goalers mean goalers, absolute.

Where actions for escapes are said to lie against goalers, such absolute goalers are intended, as writs are directed to, yet it hath been holden by *Holt, C. J.* that an action lies for a voluntary escape

ape against the goaler, as well as against the she-
 ff, it being in nature of a rescue. 2 Salk. 441.
 Salk. 18. whom writs are directed.

Arrest, On Mesne Process.

ARRREST in common law, is the apprehend-
 ing or restraining of one's person, in execu-
 tion of the command of some court, or officer of
 justice. Definition of the word arrest.

When a person is legally stopped, apprehended
 and restrained of his liberty for debt, &c. he is
 said to be arrested, or put under an arrest; which
 is the beginning of imprisonment. When said to be arrested.

"None shall be arrested for debt, trespass, &c.
 or other cause of action, but by virtue of a pre-
 cept or commandment of some court; but for
 treason, felony, or breach of the peace, a man may
 arrest without precept or warrant. *Terms de ley*,
 54." The king cannot command any one by
 word of mouth to be arrested for a debt, but he
 must do it by writ, or order of his courts, accord-
 ing to law: nor may the king arrest any man, for
 suspicion of *treason* or *felony*, as his subjects may,
 because if he doth wrong, the party cannot have an
 action against him. 2 Inst. 186. None to be ar-
 rested for debt
 but by a precept
 or warrant.

An arrest must be, "by corporal seising or touching
 the defendant's body;" after which the bailiff
 may justify breaking open the house, in which he
 is, to take him: otherwise he has no such power,
 but must watch his opportunity to arrest him.
 For every man's house is looked upon by the law,
 to be his *castle of defence*, and *asylum*, wherein he
 should suffer no violence. 5 Co. 91. 3 Inst. 162.
 Dalt. 310. The king cannot
 command any
 one by word of
 mouth to be ar-
 rested.
 nor for felony,
 and why.

If a bailiff lays hold of one by the hand (whom
 he hath a warrant to arrest) as he holds it out of
 the window, this is such a taking of him, that the
 bailiff may justify the breaking open the house to
 carry him away. 1 Vern. 306. How an arrest
 must be.

G

A

Every man's
 house is his cas-
 tle, therefore
 cannot break
 open outer door.

When he breaks
 open the house.

Sheriff bound to execute process out of a court of competent jurisdiction, if erroneous.

And not liable to trespass for false imprisonment, if he arrest a certificated bankrupt, &c.

If he acts in obedience to process, sufficient.

When a bailiff may break open door of a lodger.

Inner door, no protection.

Cannot break an outer door.

But, if he touch the defendant's, body, and he flies, he may justify breaking open the house.

On a *capias*, &c. at suit of a common person, cannot break open house of defendant.

A sheriff is bound to execute process issuing out of a court of competent jurisdiction; and though there be no cause of action, or the process is erroneous, he is not responsible. *Vent.* 273. It would be extremely hard, indeed, upon a sheriff or his officers, if they were bound to enquire into the truth of an exemption, and determine at their peril. *Dougl. Rep.* 673. And therefore, it has been held, that a sheriff or his officer, is not liable to an action for false imprisonment, for arresting a certificated bankrupt, a peer, or discharged insolvent, or a person who took advantage of the 20 *Geo.* 3. c. 64. made on occasion of the prisons being burnt in London by the rioters, although the party in such case is privileged from arrests. *Tarleton v. Fisher* and others, *Dougl.* 671. For the general law is, "*That if the sheriff has acted in obedience to the mandate of the court, he is excused.*" *Ibid.* 677. per Buller, *Just.*

A bailiff may in execution of mesne process, break open the door of a lodger, having first gained peaceable entrance at the outer door of the house. *Lee v. Gansell*, *Cow. Rep.* 1. For in the case of *Asley v. Pindar*, 1 *Geo.* 3. 1760, an inner door has no protection at all; and therefore if the officer lawfully enters the outer door, he may break open the inner door, to execute the duty of his office.

The sheriff cannot break an outer door to arrest the defendant, on mesne process, or execution *Cro. Eliz.* 908. But if the bailiff touch the defendant, and after he get into the house, it is said, he may justify the breaking open the house to take him. *Vent.* 306. 6 *Mod.* 173. *Cro. Jac.* 280. *Palm.* 53. 6 *Mod.* 105.

And upon a *capias*, &c. or other process, at the suit of a common person, the sheriff after request to open the doors, and denial, cannot break the house of the defendant, and that in such case the sheriff would be a trespasser, though the execution would be good. 5 *Co.* 92. 6. *Cro. Eliz.* 909. *Mow*

Door 668. *Yelv.* 28. *March* 4. *Cro. Car.* 537.

Jon. 430. 1 *Bulstr.* 46. It is said, if the door be shut to, and only latched, (but not locked nor barred, &c.) the officer may not draw the latch and so enter. *Dalt.* 350. *M.* 36 *Eliz. per Cur.* *Interm.*

And yet, if the door be open, and the sheriff or bailiff come to the house, and shews the king's process, and offers to enter to execute the same, (being at the suit of any subject) and the owner shuts the door against the sheriff, &c. here the officer, "giving notice of the cause of his coming, and requesting to have the doors open;" may break open the house, if the party refuses to open the door.

If door shut, and only on the latch

If door be open, and bailiff comes and shews process, and offers to enter, and owner shuts door, officer gives notice, &c. may enter.

5 Co. 91.

5 Co. 92, 93.

The sheriff's officers on mesne process, came to the house where the defendant lodged, and knocked at the door, whereupon the house-keeper's wife came to the door and opened it a little to see who was there, and the bailiffs presently with their swords drawn, rushed in by force, went up to the chamber-door where the defendant lay, broke it open, and hurt divers in the house. Held, that the entry was unlawful, for the opening of the door was occasioned by craft, and their entering in was by violence, for which they were all fined.

Cannot enter with swords drawn, &c.

or by craft.

Dalt. 528. See *Hob.* 263, 264. *Waterhouse & Ux. vers. Saltmarsh.*

The privilege of a man's house only extends to the owner, and shall not protect any person who flies thither, nor the goods of any person conveyed, to prevent any lawful execution, or to escape the ordinary process of law. And therefore if the sheriff having process against a stranger, do desire to have the door opened, or to have the body of the party flying thither, after such request, if denial or refusal be made, or that it be not done, then the sheriff or his officers may break open the house, and execute the process without any danger of law. 5 Co. 93.

The privilege of a man's house extends to the owner only, and not to a stranger.

Therefore, if stranger fly into the house, the bailiff may enter, &c.

In all cases, where the king is party, he may break open the doors,

but he must first signify the cause.

Capias utlagatum, though on mesne process.

And in all cases, where the king hath interest, may enter.

If he enters, and owner locks him in, sheriff may enter to release.

Locking in bailiffs, court will grant an attachment.

If one escapes after arrest, may break open.

Cannot break in at windows.

But, notwithstanding the general rule, that the sheriff cannot break the outer door to arrest at the suit of the subject; yet, in all cases, where the king is party, if the door be not open, the sheriff may break the door of the party, either to take him, or to execute the process, if he cannot otherwise enter therein; but, before such entry, he ought "to signify the cause of his coming, and make request, that the doors may be opened." 5 Co. 91.

So, upon a *capias utlagatum*, though on mesne process, and at the suit of a subject, the officers may break open any outward-doors, after demand and refusal. 2 Show. 87. The king v. Bird. 19 Vin. Abr. 433.

And, in all cases where the king hath any interest, the writ is *quod non omittas propter aliquam libertatem*; and therefore, the privilege of any man's house, will not hold against the king. Dalt. 350.

If the sheriff's bailiffs enter the house, the door being open, and the owner locks them in, the sheriff may justify breaking open the door, for the enlarging and setting at liberty the bailiffs; for, if in this case, he were obliged to stay, until he could procure a *homine replegiando*, it might be highly inconvenient; also it seems, that in this case, the locking in the bailiffs, is such a disturbance to the execution, that the court will grant an attachment for it. Cro. Jac. 555. 1 Roll. Rep. 132. Palm. 52. White v. Whitshire.

So, if one be arrested, and after escapes into his house, the sheriff may break the doors to take him, as where one opened his casement, and the sheriff took him by the hand. 1 Roll. Rep. 138. Palm. 54. 6 Mod. 173.

A bailiff cannot break in to arrest at the window of a house, for windows and outer-doors, are intended for security of the house against persons from without, endeavouring to break in. Foster's Cr. L. c. 8. s. 20.

In an action for an escape against the sheriff of A. the fact was, that an arrest was made by young Fenton, and not the father, who was the officer. The father was at 200 yards distance, and not in sight of the defendant, but young Fenton said, at the time of the arrest, "that he had authority in his pocket, and that it was at the suit of Blatch." It was tried before Mr. Justice Willes, and he left it to the jury, whether, old Fenton the officer, was not *quodam modo*, present at the time of the arrest; and they found for the plaintiff. Upon motion for a new trial, Lord Mansfield said, it was properly left to the jury, for it was their province to judge, whether the officer was on that business, and if he was immediately following the son, it was sufficient. Mr. Justice Aston said, It is not necessary, that the bailiff should be actually in sight, but he must be so near, as to be near at hand, and acting in the arrest; the jury have found he was. Mr. Justice Ashurst concurred. Cow. Rep. p. 65.

Where persons having authority to arrest or imprison, using the proper means for that purpose, are resisted in so doing, and the party making resistance is killed in the struggle, this homicide is justifiable. And, on the other hand, if the party having authority to arrest or imprison, using the proper means, happen to be killed, it will be murder in all who take a part in such resistance. For, it is homicide, committed in despite of the justice of the kingdom. This is founded in reason, and public utility. For, few men would quietly submit to an arrest, if in every case of resistance, the party empowered to arrest, was obliged to desist, and leave the business undone.

A defendant, in a civil suit, being apprehensive of an arrest, flieeth, the officer pursueth, and in the pursuit, killeth him. This saith Lord Hale, will be murder. Ha. Hist. Pl. Cr. 481.

If the officer in the heat of the pursuit, and merely in order to overtake the defendant, should trip up his heels, or give him a stroke, with an ordinary

Arrest made by a bailiff's son, the father 200 yards distant, held good, tho' he was not in sight.

If resisted, and the party making resistance is killed, justifiable in the officer.

Murder to kill the officer.

Founded in reason.

If defendant flies, and is pursued, and in the pursuit, officer kills him, murder.

If officer in the heat of the pursuit, and merely in order to overtake

pendant, and should trip up his heels, &c. and death should ensue, manslaughter.

And why.

But, if he had made use of a deadly weapon, murder.

Ministers of justice are under the protection of the law, and why.

Rule not confined to the instant the officer is on the spot.

And if he comes to do his office, and meets with opposition retires, and in the retreat killed, murder.

Ministers in civil suits like protection.

On arrests on process if officer gives notice of his authority and officer killed, murder.

ordinary cudgel, or other weapon *not likely to kill* and death should unhappily ensue, he cannot think that this will amount to more than manslaughter; if, in some cases, even to that offence. The blood was heated in the pursuit, his prey, a *lawful prey*, just within his reach, and no signal mischief was intended. But, had he made use of a deadly weapon, it would have amounted to murder. The mischievous vindictive spirit, the *malitia*, which always must be collected from circumstances, determines the nature of the offence. *Fost. Cr. L. 270, 271.*

Ministers of justice, while in the execution of their offices, are under the peculiar protection of the law. This special protection is founded in great wisdom and equity, and in every principle of political justice. For, without it, the public tranquillity cannot possibly be maintained, or private property be secured, nor in the ordinary course of things, will offenders of any kind be amenable to justice. And for these reasons, the killing of officers so employed, hath been deemed murder of malice prepense, as being an outrage wilfully committed, in defiance of the justice of the kingdom. This rule is not confined to the instant the officer is on the spot, and at the scene of action, engaged in the business which brought him thither; for he is under the same protection of the law, *eundo, morando, & redeundo*. And therefore, if he cometh to do his office, and meeting with great opposition, retireth, and in the retreat, he is killed; this will amount to murder. *Fost. 308, 309.*

The ministers of justice in civil suits, under proper limitations, are intitled to the same protection for themselves and followers, and upon the same principles of political justice. *Ib. 310.*

And, in the case of arrests upon process, whether by writ or warrant, if the officer named in the process, give notice of his authority, and resistance is made, and the officer killed, it will be murder;

murder; if, in fact, such notification was true, and the process legal. *Ibid.* 311. "Provided the process, be it by writ or warrant, be not defective in the frame of it, and issues in the ordinary course of justice, from a court or magistrate having jurisdiction. *Ibid.*

Process must be legal.

An arrest in the night as well as in the day, is lawful, and as well at the suit of a subject, as at the king's; for the officer or minister of justice ought to arrest him when he can find him, for otherwise, perhaps, he will never arrest him; because, says Lord Coke, *he who has done amiss, hates the light.* 8 Co. 37. b. Salk. 322. pl. 8. 6 Mod. 130.

Arrest in the night, as well as day, lawful.

He cannot arrest after the return day, either by original or bill, *Cro. Eliz.* 760. pl. 33. *Moore* 701. l. 998.

Cannot arrest after return of writ.

Although all writs and process are directed to the sheriffs of the different counties; yet, he never executes the same himself, but his under-sheriff usually makes his warrant to his bailiffs or officers, for the execution of such writs.

Sheriff never executes himself, but grants warrants.

And these warrants, must be made according to the nature of the writ, and contain the substance thereof, and be made out in the high-sheriff's name, and under the seal of office.

Warrants must be according to the writs, and made in name of high-sheriff.

By stat. 6 Geo. 1. c. 25. s. 53. No high-sheriff, under-sheriff, their deputies or agents, shall make out any warrant, before they have in their custody the writs upon which such warrants ought to issue, on forfeiture of 10*l.* And every warrant to be made out upon any writ out of the king's bench, common pleas, or exchequer, *before judgment*, to arrest any person, shall have the same day and year set down thereon, as shall be set down on the writ itself, under forfeiture of 10*l.* to be paid by the person who shall fill up, or deliver out such warrant. s. 54.

No warrant to be made out without the writ.

And all warrants to have day and year set down.

By stat. 2 Geo. 2. c. 23. s. 22. Every warrant, that shall be made out on any writ, process, or execution, shall before the service or execution thereof, be subscribed or indorsed with the name

Every warrant shall have name of attorney subscribed.

But the not doing of it, not to vitiate same.

If writ be subscribed.

Forfeits 5*l*.

Warrant in K. B.

Warrant in C.P.

Exchequer.

Chancery.

Need not be shewn unless demanded.

If demand is made, he must shew.

If directed to two, one may execute.

of the attorney, clerk in court, or solicitor, by whom such process, &c. shall be sued forth. But the not subscribing, or indorsing the name, or any warrant made on any writ, &c. shall not vitiate the same, but such writ shall be valid and effectual, provided the writ, whereon such warrant is made out, be regularly subscribed or indorsed; and every sheriff or other officer, who shall make out any warrant upon any writ, process, or execution, and shall not subscribe or indorse the name of the attorney, clerk in court, or solicitor, who sued out the same, shall forfeit 5*l*. to be assessed as a fine by the court, out of which such writ, &c. shall issue; one moiety to his majesty, and the other to the person aggrieved. See 12 Geo. 2. c. 12. §. 4.

If the writ be sued out of the court of king's bench, then the warrant must be, "*So that I may have his body before the lord the king, &c.*"

If out of the common pleas, then it must be, "*So that I may have his body before the justices of the lord the king, &c.*"

If out of the exchequer, then, "*So that I may have his body before the king's barons of his exchequer, &c.*"

If out of the chancery, "*So that I may have his body before the king in his court of chancery, on, &c.*"

These warrants need not be shewn, unless demanded, nor before the defendant peaceably submits to the arrest. *Cro. Jac.* 485, 486. provided the bailiff is a known bailiff; but a special bailiff must shew his warrant.

If the demand is made, he must then shew his authority, because the party may free himself by payment of the debt, or agree with the plaintiff, or put in bail for his appearance, *Cro. Jac.* 485, 486. *Countess of Rutland's case.*

If a warrant be directed to two men jointly, to arrest another; yet, either of them alone may do it. If directed to four or three jointly or severally, yet

yet two may arrest him, because it is for the execution of justice. *Co. L. 181. 2 Rol. Rep. 137.*

By stat. 29 *Car. c. 7. s. 6.* It is enacted, "that no person upon the *Lord's day*, shall serve or execute, or cause to be served or executed, any writ, process, warrant, order, judgment, or decree, (except in cases of treason, felony, or breach of the peace,) but that the service of every such writ, process, warrant, order, judgment, or decree, shall be void, to all intents and purposes whatsoever; and the person and persons so serving or executing the same, shall be as liable to the suit of the party grieved, and to answer damages to him for doing thereof, as if he or they had done the same, without any writ, process, warrant, order, judgment, or decree."

If to 4, or 3.

Process or warrant not to be served on Sunday.

The defendant was taken on a *capias utlagatum* on a *Sunday*, and on motion, was discharged, but attachment refused. *Barnes 228.*

Taken on a *capias utlagatum* and discharged on motion.

An arrest on *Sunday* is void, and the party may have an action of false imprisonment. *Salk. 78. pl. 1.*

Arrest on Sunday void, and an action will lie.

A prisoner escaped, and was retaken on a *Sunday*, by virtue of a judge's warrant, called an escape warrant. The question was, whether this taking was such service of process, as was against the act 29 *Car. 2. c. 7.* *Per Cur.* this is a taking in the nature of a fresh pursuit, and is no original process; and the gaoler or party might have taken him on a fresh pursuit, on a *Sunday* before this statute. 6 *Mod. 95. 2 Salk. 626. pl. 7. 2 Lord Ray. 1028.* he might have been retaken on a *Sunday*, without a warrant. 6 *Mod. 95.*

May take a prisoner on a Sunday, if he escape.

Any person may be taken on the *Lord's day*, by virtue of any warrant granted in pursuance of this oath. 1 *Ann. stat. 2. c. 6. s. 1. 5 Ann. c. 9. s. 3.* *Vide title escape.*

On escape warrant, may take on Sunday.

If a defendant arrested on a *Saturday* escapes, he may be retaken on the *Sunday*. *Mod. Caf. 231.* for that is not an execution of process, but a continuance

If arrested on Saturday, and escapes.

tinuance

tinuance of the former imprisonment. 6 *Mod. Caf.* 321.

May be arrested on a Sunday, on lord chancellor's warrant.

A person may be arrested on a *Sunday*, on lord chancellor's warrant, or an order of commitment for contempt; for he is considered as in custody from the time of making the order, and the warrant is directed to the goaler, as in the nature of an escape warrant. 1 *Atkins* 55.

I remember, that a sheriff's officer was indicted for arresting defendant on a *commission of rebellion*, out of the *exchequer of pleas*, on a *Sunday*, and he was found guilty, and fined.

Process, if on an indictment, and an attachment for a contempt, it is said, may be served on a *Sunday*. 1 *Atk.* 55.

It was questioned, Whether serving an attachment for contempt on *Sunday*, were within the statute against *Sabbath* breaking, the words, *that all arrests on Sunday, except for breach of peace, are void.* Holt. Suppose it were a warrant to take for *forgery, perjury, &c.* shall they not be served on *Sunday*? And shall not any process at the king's suit be served on *Sunday*? Sure the *Lord's day* ought not to be a sanctuary for malefactors; and this here partakes of the nature of process upon an indictment; but *Cur. adv. Holt's Rep. Cecil and others of the town of Nottingham.* 348.

Holt, chief justice, inclined to think, that attachment of contempt might be served on *Sunday*.

So for non-performance of award.

I cannot find this case in common pleas.

No arrest within the palace.

So that *Lord Chief Justice Holt* was inclined to think, that a man might be taken on a process of contempt on *Sunday*, because it was in the nature of a breach of the peace, and an exception out of the act of parliament. *Lord chancellor*, in a case *ex parte Whitechurch.* 1 *Atk.* 55. says, if a man be taken on an attachment for a non-performance, of an award on a *Sunday*, as was held in the court of *common pleas*, in a case cited by the attorney-general, Why is not a contempt for non-performance of an order of this court, equally a breach of the peace, as the non-performance of an award?

No arrests ought to be within the king's palace at *Westminster, &c.* where his royal person resides;

nor

nor of any of the king's servants in ordinary in any other place, without notice first given to the *lord chamberlain*, that he remove them, or make them pay their debts. *Wood's Inst.* 576. 1 *Lev.* 159. 3 *Inst.* 140, 141.

The great mansion-house purchased by the king, late parcel of the possession of the *archbishop* of *York*, and the *park*, and the soil of the antient palace at *Westminster*, shall be the king's whole palace at *Westminster*, and shall extend to all the streets leading from *Charing-Cross* to the *Sanctuary-gate* at *Westminster*, and in all the tenements on both sides, of the street from the said *Cross* to *Westminster-hall*, situate between the *Thames* on the east, and the *Park-wall* on the west. Stat. 28. Hen. 8. c. 12.

Extent of the palace.

The privileges of the palace are by common law; in respect of the queen's presence, but that privilege does not determine so soon as ever she turns her back, when a house has been declared a palace. *Powell Just.* 3 *Salk.* 284. *Holt. C. J.* held, that where there was a total absence, where the queen was neither present in person nor by her domesticks, or any of her family, the place was not privileged; otherwise where there was only a short and personal absence, *Ibid.* *Elderton's case, same case*, 2 *Lord Ray.* 978. 6 *Mod.* 73.

Privilege by the common law of the palace.

Westminster Hall, whilst the courts are sitting is no privileged place, and a man who has no business there, by special rule or order, or subpoena'd to attend there may be arrested, for it is not the place, but the business and employment that protects the person.

Person not privileged may be arrested in *Westminster Hall*, if he is not subpoena'd &c.

I have known a person arrested in the verge of the court (as it is termed) and motion to discharge him and for an attachment in the common pleas against the bailiff, but the court refused both. *De Grey Ch. Justice.*

Verge of the court will not release or grant an attachment.

And in a late case in the court of *K. B.* the defendant was arrested in the verge of the court, motion to discharge him on common bail, and the bailiffs

The like refused in *K. B.*

bailiffs to answer the matters of the affidavit. Rule discharged, and the court said, that if the sheriff enter a franchise, and execute process therein, without a *non omittas*, the execution is good, tho' the sheriff is liable to an action, according to the rule, *quod fieri non debet, factum valet.* *Fitzpatrick v. Kelly.* Mich. 22 Geo. 3.

Stannaries.

The jurisdiction of the stannaries is only for tin matters, and where the persons who sue or one of them, be a tinner. *Cro. Car.* 333. pl. 19. stat. 16. *Car. c.* 15. s. 4. They have no jurisdiction of any local action arising out of the stannaries. 7 *Mod.* 103.

Privileged places now demolished and to prevent arrests highly penal.

Formerly one of the greatest obstructions to public justice, both of the civil, and criminal kind, was the multitude of pretended privileged places, where indigent persons assembled together to shelter themselves from justice, (especially in London and Southwark) such as *White-friars*, *Savoy*, *Salisbury-court*, *Ram-alley*, *Mitre-court*, *Fuller's rents*, *Baldwin's-gardens*, *Montague-cloze*, or the *Minories*, *Mint Clink*, or *Deadmans-place*, within the *Hamlet of Wapping* or *Stepney*, under pretext of their being ancient palaces of the crown, or the like: all of which sanctuaries for iniquity are now demolished, and the opposing of any process therein, is made highly penal, by stat. 8 & 9 *W.* 3. c. 27. s. 15. 9 *Geo.* 1. c. 28. s. 1.

Persons opposing execution of process or abusing the officer if he receives a hurt guilty of felony.

“ and 11 *Geo.* 1. c. 22. s. 1. which enacts, “ *that*
 “ *persons opposing the execution of any process in*
 “ *such intended privileged places, within the bills*
 “ *of mortality, or abusing any officer in his endea-*
 “ *vours to execute his duty therein, so that he re-*
 “ *ceives bodily hurt, shall be guilty of felony, and*
 “ *transported for seven years: and persons in dis-*
 “ *guise, joining in or abetting any riot or tumult,*
 “ *on such account, or opposing any process, or as-*
 “ *faulting and abusing any officer executing, or for*
 “ *having executed the same, shall be felons without*
 “ *benefit of clergy.*”

May arrest within the liberty of the Rolls.

Sheriff may arrest within the *liberty of the rolls*, as that has been held no privileged place, unless for witnesses

witnesses, or parties to the suit, going and returning. *Freem. Rep.* 368. *pl.* 474.

Who are *privileged* from *Arrests*.

PRIVILEGE, *privilegium*, formed from the Latin *privata lex*, in the general, any kind of right, or the like, prerogative or advantage, attached to a certain person, condition or employment, exclusive of others.

Privilege personal, is that which is granted to any person, either against or beyond the course of the common law.

Privilege is an exemption from some duty, burthen or attendance, to which certain persons are intitled from a supposition of law, that the stations they fill, or the offices they are engaged in, are such as require all their time and care; and that therefore without this indulgence, it would be impracticable to execute such offices to that advantage which the public good requires.

The person of the king is so sacred, as that no violent hands may in any case be laid upon him; neither may he be impleaded or sued by action, as a common person may; but wheresoever the king shall seize any man's land, or take goods (having no title by order of his laws so to do) the subject for his remedy in all such cases, is driven to sue unto his sovereign, by way of petition only, for that no action lies against the king. *Stamf. of Prerog.* 42. 72. 73. A queen regnant has the same privileges as a king. A queen consort is free from arrests, and a queen dowager is also intitled thereto. *2 Inst.* 48. *3 Inst.* 30. *pl.* 19.

The peers of the realm are by birth hereditary counsellors of the crown, and may be called together by the king to impart their advice in all matters of importance to the realm, either in time of parliament, or, which hath been their principal use, when there is no parliament in being. *Co. Litt.*

Litt. 110. And in our law books, it is laid down, that peers are created for two reasons. 1. *Ad consulendum.* 2. *Ad defendendum regem*: for which reason, the law gives them certain great and high privileges; such as freedom from arrests, &c. even when no parliament is sitting: because the law intends that they are always assisting the king with their counsel for the common-wealth; or keeping the realm in safety by their prowess and valour. 7 *Rep.* 34. 9 *Rep.* 49. 12 *Rep.* 96.

Bishops.

This privilege extended formerly to abbots, as it now does to bishops. *Moore* 767. 3 *Seld.* 1138.

The law supposes them to have sufficient property to answer in suits and actions brought against them: but for *treason, felony, or breach of the peace*, their persons are not free from arrests. 4 *Inst.* 25.

Sixteen peers of Scotland.

The sixteen peers of Scotland, also have all the privilege of parliament, which the peers of England now have. *Stat.* 5 *Ann.* c. 8.

The rest of the peers of Scotland.

Also all the rest of the peers in Scotland have all the privileges of the peerage of England (except voting in parliament,) *Str.* 990. *Fortesc.* c. 163, 165. *Peere Wms.* 583. 4 *Bacon Abr.* 229.

Extends only to peers of England, and Scotland.

Privilege of arrests extends only to the peers of Great Britain and Scotland, so that a nobleman of any other country, or a lord of Ireland hath not any other privileges in this kingdom than a common person; also the son and heir apparent of a nobleman is not intitled to the privilege of being tried by his peers, which is confined to such person as is a lord of parliament at the time; but it seems that an infant peer is privileged from arrests, his person being held sacred. *Co. Litt.* 150. 2 *Inst.* 48. 3 *Inst.* 30.

Servants of peers.

The servants of peers employed about their persons and estates, are free from arrests; but this does not extend to all their menial servants. 1 *Wilf.* 278. Nor to an attorney employed by a peer. *Ord. Dom.* 1696.

Peerefs.

A peerefs by birth, or marriage, also hath privilege from arrests, but if a peerefs by marriage, marries

ries a commoner, she is not intitled to any privilege. 2 *Inst.* 50. *For. Rep.* 162.

The widows of peers are to have privilege. 2 *Cha. Caf.* 224. 2 *Sid.* 31.

A peer may be arrested on an attachment of contempt, for neglecting to obey a *ha. corp.* issued out, of either of the courts at *Westminster*. 1 *Burr.* 631.

The privilege of the lords, commences from the teste of the writ of *summons* to parliament, and it is said that upon every session and prorogation, their privilege is for *twenty days before and twenty days after each session*. 2. *Lev.* 72. *Cha. Caf.* 221. *Sid.* 29. *pl.* 2. *Ord. Dom.* 27 *Jan.* 1628. But as they are always supposed to be attending on the king, their privilege is for ever sacred and inviolable.

The king's servants are privileged in some cases in respect to their necessary attendance. 2 *Inst.* 531. 704. *Skin* 21. 2 *Ch. Rep.* 196. 2 *Show.* 84. and privileged from arrests. *Ray.* 152. 1 *Mod. Caf.* 12.

The king's servant is not so privileged from arrest, but that the sheriff ought to return his writ, unless he shews his privilege on the arrest. *Keb. Rep.* 40. *pl.* 108.

The court declared their opinion to be, that none of the king's servants in ordinary, can be arrested without notice first given to the lord chamberlain, who cannot privilege any perpetually, but in convenient time, must either remove such, or make them pay their debts; but if the bailiff *without notice*, do arrest such, the *messengers of the lord chamberlain*, cannot rescue the prisoner by letter, (the arrest being lawful) nor by warrant, but the party is *punishable for his contempt*; for no man can know the king's servant by his face, but he must shew his privilege on the arrest. *Keb. Rep.* 84. *pl.* 137. 2 *Keb.* 3. *pl.* 6. *Keb.* 842. *pl.* 33. 2 *Show. Rep.* 84. *pl.* 72. *T. Raym.* 152. 34.

No petition is to be received for protecting his majesty's servants. *Ord. Dom.* 23 *Nov.* 1693.

Peer may be arrested on an attachment of contempt.

When privilege of peers commences.

King's servants.

King's servant not so privileged, but that sheriff ought to return writ, &c.

Court declared, that none of the king's servants in ordinary can be arrested without notice to lord chamberlain.

No petition to protect in the house of lords.

A

Warden of Tower.

A warden of the Tower claimed privilege as a king's servant, but denied. 2 *Keb.* 485.

T. Raym. 152. says, The chief justice reported, "That the king's servants were free from arrests, and therefore he should not be deprived of them without his leave."

Neither of the servants of a queen consort, or of a queen dowager, are privileged from an arrest. *Keb.* 842. pl. 33. *Starkie's case.*

Royal family.

It seems that none of the Royal family are privileged from arrests, merely as such, nor princes of the blood, or peers of foreign states, and consequently none of their servants. 7 *Co.* 15. a. b. 16. a. 2 *Inst.* 48. 3 *Inst.* 30. pl. 19.

Members.

Privilege of parliament was principally established, in order to protect its members not only from being molested by their fellow subjects, but also more especially from being oppressed by the power of the crown. If therefore all the privileges of parliament were once to be set down and ascertained and no privilege to be allowed but was so defined and determined, it were easy for the executive power to devise some new case, not within the line of privilege, and under pretence thereof to harass any refractory member and violate the freedom of parliament. The dignity and independence of the two houses are therefore in great measure preserved by keeping their privileges indefinite. Some however of the more notorious privileges of the members of either house, are privilege of speech, of person, &c. vide 1 *W. & M. J.* 2 c. 2.

Granted at request of the speaker.

Privilege of parliament says *Prynne*, 624, is only a temporary immunity, which our kings grant to their necessary attendants, during parliament assemblies, against arrests and imprisonments of their persons, customarily and humbly demanded by the speaker of the house of commons from all our kings, at the beginning of every parliament, when presented by the house, in their own and the members behalf, and then freely and graciously granted to them

them by the king, as a matter of custom and ancient right. Since this, it hath been resolved, that such demand was not necessary, and the privilege subsisted notwithstanding. *D' Ewes's Journal* 22. *Sir Robert Atkin's Treatise of the Power of Parliament*, 40.

To assault by violence a member of either house, or his menial servants, is a high contempt of parliament, and there punished with the utmost severity. It has likewise peculiar penalties annexed to it in the courts of law by stat. 5 H. 4. c. 11 H. 6. c. 11. Neither can any member of either house, be arrested and taken into custody, without a breach of the privilege of parliament: "But any person may commence and prosecute any action or suit in any court of record, equity, or of admiralty, and in all causes matrimonial, and testamentary, against any peer, or lord of parliament of *Great Britain*, or against any of the knights of the house of commons, of *Great Britain* for the time being, or against their or any of their menial servants, or any other person intitled to privilege of parliament; and no suit, action, &c. shall be staid by or under colour of privilege of parliament, provided that nothing shall extend to subject the person of any of the knights, citizens, and burgesses, or the commissioners of shires, and burghs, of the house of commons of *Great Britain* for the time being, to be arrested or imprisoned upon any such suit or proceeding." 10 Geo. 3. c. 50. s. 2. The servants of members are not by this act privileged, therefore I take it, their privilege is disposed of, and they may be arrested.

All other privileges, which derogate from the common law, are now at an end, save only as to the freedom of the members person, and that for 40 days after every prorogation, and 40 days before the next appointed meeting; which is now in effect as long as the parliament subsists, it seldom being prorogued for more than fourscore days at a time. 2 Levinz. 72.

H

Colonel

To assault a member or his menial servants high contempt.

Suits may be prosecuted against peers, and their servants.

But not to subject the persons of members of the house of commons to arrest.

All privileges which derogate from the common law, are at an end, save the person, and that for forty days after prorogation and forty days before next meeting.

Pitt's case.

Colonel *Pitt* was arrested two days after the dissolution of the parliament, and he was discharged, it being held not a convenient time. *Str.* 985.

All other privileges which obstructed the ordinary courts of justices, restrained by statute.

As to all other privileges, which obstructed the ordinary courts of justice, they were restrained by the stat. 12 *W.* 3. c. 3. 2 & 3 *Anne.* c. 18. & 11 *Geo.* 2. c. 24. and now totally abolished by the 10 *Geo.* 3. c. 50. Likewise for the benefit of commerce, it is provided, by 4 *Geo.* 3. c. 33. that any trader having privilege of parliament, may be served with legal process for any just debt, (to the amount of 100*l.*) and unless he makes satisfaction within *two months*, it shall be deemed an act of bankruptcy; and that commissions of bankrupt may be issued against such privileged traders, in like manner as against any other.

Any trader having privilege of parliament, may be served with legal process, and unless he makes satisfaction.

Persons outlawed.

Persons out-lawed, should not be suffered to sit in the parliament house. *Anderf.* 293.

No privilege for any person keeping a common gaming-house.

No privilege of parliament should be allowed to any person whatsoever, against whom a prosecution or proceeding shall be commenced or had, for keeping of any public or common gaming-house, or any house, room or place, for playing at any game prohibited by this, or any other act now in being, against excessive or deceitful gaming. 18 *Geo.* 2. c. 34. s. 7.

No member acting as a public officer.

No member of the house of commons, acting as a public officer, hath any privilege of parliament, touching any matter done in the execution of his office. *Order of the house*, 27 Nov. 1699. 2 & 3 *Ann.* c. 18. s. 1.

No copartner in trade, is intitled to privilege.

No co-partner in any trade or undertaking, is intitled to privilege, in respect to any matter relating to such co-partnership. By order of *Friday*, 9 April. 1742.

Number of English members.

The number of *English* representatives is, 513 (viz. 92 knights of shires, 50 citizens for 25 cities, *Ely* sending none, and *London* 4. 334 burghesses for 167 boroughs, 2 each, 5 for 5 boroughs, 1 each, and 12 for 12 boroughs, in *Wales*, *Pembroke*, sending 2, and *Merioneth* none; 4 for the 2 universities

2 universities; and 16 for the 8 cinque ports.)
And of Scots, 45, in all, 558.

Embassador or *ambassador*, is a minister sent from one sovereign prince, as a representative of his person, to another. Embassadors.

The word is derived from the corrupt Latin, *ambasciator*, formed of *ambactus*, an old word borrowed from the *Gaulish*, signifying, servant, domestic, or officer. Such is the origin given by *Borel*, *Menage*, and *Chiflet*, after *Salmasius* and *Spelman*. In Latin, we call this kind of minister, *legatus*, or *orator*; though, it is certain, the word *embassador*, with us, has a much more extensive signification, than that of *legatus* among the Romans; and excepting, that they are both under the protection of the law of nations, there is scarce any thing in common between them. Derivation.

Embassadors in ordinary, are but of modern invention, and not above 200 years ago since they were first heard of; until then, all ambassadors were extraordinary, and retired as soon as they had dispatched the affair they were sent upon. The name of ambassador, *Cicero* observes, is sacred and inviolable: *Non modo inter sociorum jura, sed etiam inter hostium tela, incolume versatur. In Verr. Orat. II.*

An ambassador, is a person sent by one sovereign prince to another, to transact in the place of his sovereign, such matters as relate to both states: By the law of nations, none under the quality of a sovereign prince, can send ambassadors. *Molloy* 129. And it is said by *Lord Coke*, 4 *Inst.* 153. that there can be no ambassador without letters of credence from his sovereign, to another that hath sovereign authority. If sent from a king or absolute potentate, though in his letters of credence, he is termed an agent, or *nuncius*; yet, he is an ambassador or legate. 4 *Inst.* 153. Embassadors.

The rights, the powers, the duties, and the privileges of ambassadors, are determined by the law of nature and nations, and not by any municipal laws. Rights and privileges determined by the law of nature and nations.

cipal constitutions. For, as they represent the persons of their respective masters, who owe no subjection to the laws, but those of their own country; their actions are not subject to the controul of the private law of that state, wherein they are appointed to reside. He that is subject to the coercion of laws, is necessarily dependant on that power by whom those laws were made: But an ambassador ought to be independant of every power, except that by which he is sent; and of consequence, ought not to be subject to the mere municipal laws of that nation, wherein he is to exercise that function. If he grossly offends, or makes an ill use of his character, he may be sent home, and accused before his master, who is bound either to do justice upon him, or avow himself the accomplice of his crimes. *Sp. L.* 21. 26. But there is great dispute among the writers on the laws of nations; whether this exemption of ambassadors extends to all crimes, as well natural as positive; or whether it only extends to such as are *mala prohibita*, as coining, and not to such as are *mala in se*, as murder. Our law seems formerly to have taken in the restriction, as well as the general exemption. For it hath been held, both by our common lawyers and civilians, that an ambassador is privileged by the law of nature and nations; and yet, if he commits any offence against the law of reason and nature, he shall lose his privilege. 4 *Inst.* 153. 1 *Roll. Rep.* 175. 3 *Bul.* 27. And, that therefore, if an ambassador conspires the death of the *king* in whose land he is, he may be condemned and executed for treason; but, if he commits any other species of treason, it is otherwise, and he must be sent to his own kingdom. 1 *Roll. Rep.* 189. And these positions seem to be built upon good appearance of reason. For since, all municipal laws act in subordination to the primary law of nature; and, where they annex a punishment to natural crimes, are only declaratory of, and auxiliary to that law; therefore,

Van. Leeuwen,
 in F. 50. 7. 17.
 Barb. Puff. l. 8.
 c. 9. f. 9. & 17.

fore, to this natural, universal rule of justice, ambassadors, as well as other men, are subject in all countries; and of consequence, it is reasonable, that wherever they transgress it, there they shall be liable to make atonement. *Fost. Rep.* 188. But, however, these principles might formerly obtain, the general practice of this country, as well as the rest of *Europe*, seems to pursue the sentiments of the learned *Grotius*, p. 18. 4. 4. that the security of ambassadors, is of more importance, than the punishment of a particular crime. And therefore, few, if any, examples have happened within a century, where an ambassador has been punished for any offence, however atrocious in its nature.

In respect to civil suits, all foreign jurists agree, that neither an ambassador, nor any of his train or *comites*, can be prosecuted for any debt or contract in the courts of that kingdom where he is sent to reside. Yet, *Sir Edward Coke*, maintains, 4 *Inst.* 153. that, if an ambassador make a contract which is good, *jure gentium*, he shall answer for it here. But the truth is, so few cases (if any) had arisen, wherein the privilege was either claimed or disputed, even with regard to civil suits, that our law-books are silent upon it, previous to the reign of *Queen Ann*; when an ambassador from *Peter the Great, Czar of Muscovy*, was actually arrested and taken out of his coach in *London*, for a debt of 50 *l.* which he had there contracted. Instead of applying to be discharged upon his privilege, he gave bail to the action, and the next day complained to the queen. The persons who were concerned in the arrest, were examined before the privy council, (of which lord chief justice *Holt* was at the same time sworn a member) and seventeen were committed to prison, most of whom were prosecuted by information in the court of queen's bench, at the suit of the attorney general; and at their trial, before the lord chief justice, were convicted of the facts by the jury, reserving the

Civil suits not to be prosecuted against him, or his servants,

question of law, how far those facts were criminal to be afterwards argued before the judges; which question was never determined. In the mean time, the *Czar* resented this affront very highly, and demanded that the sheriff of *Middlesex*, and others concerned in the arrest, should be punished with instant death. But the queen (to the amazement of that despotic court) directed her secretary to inform him, "*that she could inflict no punishment on any, the meanest of her subjects, unless warranted by the law of the land, and therefore was persuaded, that he would not insist upon impossibilities.*" To satisfy however, the clamours of the foreign ministers, (who made it a common cause) as well as to appease the wrath of *Peter*, a bill was brought into parliament, 1708, and afterwards passed into a law, to prevent and to punish such outrageous insolence for the future. And, with a copy of this act, elegantly engrossed and illuminated, accompanied by a letter from the queen, an ambassador extraordinary was appointed to appear at *Moscow*, who declared, "*that though her majesty could not inflict such a punishment as was required, because of the defect in that particular of the former established constitutions of her kingdom; yet, with the unanimous consent of the parliament, she had caused a new act to be passed, to serve as a law for the future.*" This humiliating step was accepted as a full satisfaction by the *Czar*; and the offenders, at his request, were discharged from all further prosecution. Stat. 7 *Ann*, c. 12.

All suits against ambassadors or other public ministers, received as such, shall be void, and their servants,

This statute declares, "that all actions and suits, writs and processes, that shall at any time hereafter be sued forth or prosecuted, whereby the person of any ambassador, or other public minister, of any foreign prince or state, authorised and received as such by her majesty, her heirs or successors, or the domestic, or domestic servant, of any such ambassador, or other public minister, may be arrested or imprisoned; or his, or their goods, or chattles, may be distrained, seized,

“ seized, or attached, shall be deemed and adjudged to be utterly null and void, to all intents, constructions, and purposes whatsoever. *f. 3.*”

“ That, in case any person or persons shall presume to sue forth or prosecute, any such writ or process, such person and persons, and all attornies and solicitors, prosecuting and soliciting in such case; and all officers executing any such writ or process, being thereof convicted by the confession of the party, or by the oath of one or more credible witness or witnesses, before the *lord chancellor*, or *lord keeper* of the great seal of *Great Britain*, the *chief justice* of the court of *queen's bench*, the *chief justice* of the court of *common pleas* for the time being, or any two of them, shall be deemed violators of the laws of nations, and disturbers of the public repose, and shall suffer such pains, penalties, and corporal punishment, as the said *lord chancellor*, *lord keeper*, and the said *chief justices*, or any two of them, shall judge fit to be imposed and inflicted. *f. 4.*”

Punishment for attorney, &c. suing forth such process.

“ That no merchant or trader whatsoever, within the description of any of the statutes against bankrupts, who hath, or shall put himself into the service of any such ambassador or public minister, shall have, or take any manner of benefit by this act; and that no person shall be proceeded against, as having arrested the servant of an ambassador or public minister, by virtue of this act, unless the name of such servant be first registered in the offices of one of the principal secretaries of state, and by such secretary transmitted to the sheriffs of *London* and *Middlesex*, for the time being, or their undersheriffs or deputies, who shall, upon the receipt thereof, hang up the same in the public place in their offices, whereto all persons may resort, and take copies thereof without fee or reward. *f. 5.*”

No merchant, &c. being a bankrupt, to have any benefit of this act: Nor the servant of an ambassador, unless his name be registered, &c.

This act to be taken as a public act.

“ That this act shall be taken and allowed in all courts within this kingdom, as a public act. And that all judges and justices shall take notice of it, without special pleading. And all sheriffs, bailiffs, and all other officers and ministers of justice concerned in the execution of process, are hereby required to have regard to this act, as they will answer the contrary at their peril.”
f. 6.

In cases in *Lord Talbot's* time, I find a case in which it is determined, who are deemed *embassadors*, and *who are not*, which is as follows :

Whether a *consul* has the privilege of a public minister, and who are *embassadors*.

Barbuit had a commission, as agent of commerce from the *King of Prussia* in *Great Britain*, in the year 1717, which was accepted here by the *lords justices* when the king was abroad. After the late king's demise, his commission was not renewed until 1735, and then it was, and allowed in a proper manner ; but with a recital of the powers given him in the commission, and allowing him as such. These commissions were directed generally to all the persons whom the same shall concern, and not to the king : and his business described in the commissions was, to do and execute what his *Prussian Majesty* should think fit to order with regard to his subjects trading in *Great Britain* ; to present letters, memorials and instruments concerning trade, to such persons, and at such places as should be convenient, and to receive resolutions thereon ; and thereby his *Prussian Majesty* required all persons to receive writings from his hands, and give him aid and assistance. *Barbuit* lived here near twenty years, and exercised the trade of a tallow-chandler, and claimed the privilege of an *embassador* or *foreign minister*, to be free from arrests. After hearing counsel on this point,

Bill filed against defendant, and he files a cross bill, stating himself to be a merchant.

Lord Chancellor. A bill was filed in this court against the defendant in 1725, upon which he exhibited his cross bill, styling himself merchant. On the hearing of these causes the cross bill was dismissed ; and in the other an account decreed against the

the defendant. The account being passed before the Master, the defendant took exceptions to the Master's report, which were over-ruled; and then the defendant was taken upon an attachment for non-payment, &c. And now, ten years after the commencement of the suit, he insists he is a *public minister* and therefore all the proceedings against him *null and void*. Though this is a very unfavourable case, yet, if the defendant is truly a *public minister*, I think he may now insist upon it; for, the privilege of a public minister, is to have his person sacred and free from arrests, not on his own account, but on account of those he represents; and this arises from the necessity of the thing, that nations may have intercourse with one another in the same manner as private persons, by agents, when they cannot meet themselves. And if the foundation of this privilege is for the sake of the prince by whom an ambassador is sent, and for sake of the business he is to do, it is impossible that he can renounce such privilege and protection: for, by his being thrown into prison, the business must inevitably suffer. Then the question is, "Whether the defendant is such a person as 7 Anne, cap. 10. describes;" which is only declaratory of the ancient universal *jus gentium*: The words of the statute are, (*ambassadors or other public ministers*) and the exception of persons *trading* relates only to *their* servants; the parliament never imagining that the ministers themselves would trade. I do not think the words *ambassadors or other public ministers*, are synonymous. I think that the word *ambassadors* in the act of parliament, was intended to signify *ministers sent upon extraordinary occasions*, which are commonly called *ambassadors extraordinary*; and *public ministers* in the act, take in all others who constantly reside here; and both are intitled to these privileges. The question is, whether the defendant is within the latter words? It has been objected that he is not a *public minister*, because he brings no *credentials to the king*. Now, although

Defendant taken on an attachment and he insists that he is a public minister and all proceedings void.

If he is a public minister, he may now insist on it.

Question.

Definition of the word ambassador.

although it be true, that this is the most common form, yet it would be carrying it too far to say, that these credentials are absolutely necessary; because all nations have not the same forms of appointment. It has been said, That to make him a *public minister*, he must be *employed about state affairs*: In which case, if state affairs are used in opposition to commerce, it is wrong: but if only to signify the business between nation and nation, the proposition is right: for trade is a matter of state, and of a public nature, and consequently a proper subject for the employment of an *ambassador*. In treaties of commerce, those employed are as much *public ministers*, as any others; and the reason for their protection holds as strong: and it is of no weight with me that the defendant was not to concern himself about other matters of state, if he was authorised as a public minister to transact matters of trade. It is not necessary that a minister's commission should be general to intitle him to protection; but it is enough that he is to transact any one particular thing in that capacity, as every *ambassador extraordinary* is; or to remove some particular difficulties, which might otherwise occasion war. But what creates my difficulty is, that I do not think he is intrusted to transact affairs between the two crowns: the commission is to assist his *Prussian Majesty's* subjects here in their commerce; and so is the allowance. Now this gives him no authority to intermeddle with the affairs of the king; which makes his employ to be in the nature of a *consul*. And although he is only called an agent of commerce, I do not think the name alters the case. Indeed, there are some circumstances that put him below a *consul*; for he wants the power of judicature, which is commonly given to *consuls*. Also their commission is usually directed to the prince of the country; which is not the present case: but at most, he is only a *consul*.

Not necessary a minister's commission be general.

The commission to assist the subjects here, which gives no authority to intermeddle with the king's affairs.

Some circumstances putting him below a consul.

Opinion of wri-

It is the opinion of *Barbeyrac*, *Winequefort*, and others

thers, that a *consul* is not intitled to the *jus gentium*, belonging to *embassadors*.

ters a consul not intitled.

The law of nations does not take in *consuls*, or agents of commerce, though received as such by the courts to which they are employed. 4 Burr. 1015.

On a rule to shew cause why the bill of *Mid-lessex* in each cause, should not be set aside, and the bail bond cancelled.

On the part of defendant it appeared, and was sworn, that he was regularly appointed by Count *Hasslang* to be one of his English secretaries at 10 l. per ann. for board and lodging &c. and he swore to actual attendance and service, at several times at the Count's house; and writing, copying, and carrying several letters and memorials: In short, the defendant's affidavits were so framed, that every thing was sworn that in *absolute strictness* could be required, to bring him within the description of domestic servant to this minister.

English secretary bona fide, held to be a domestic servant within the act although he was 8 years before a trader in Ireland, and having then bought silk in England, and sold it in Ireland.

On the part of the plaintiffs, it appeared, that *Bath* was a *mercier* in *Dublin*, about seven or eight years ago; that he had afterwards been a *commissary* of stores abroad, and was now upon half pay as such, at 15 s. per day; that he speaks only English; that he had never eat nor lodged in the count's house, nor received any wages: (but as to the wages, it appeared that there were not yet so much as half a years wages become due.) It was also sworn, very generally, "that whilst he carried on trade in Ireland, he bought goods in England, and sold sold them in Ireland."

It appeared defendant was a mercier in Dublin 7 or 8 years since, afterwards commissary of stores abroad and was now on half pay, &c.

In shewing cause, several cases were cited to shew that the nature of the service must be specified, and that no one could have a right to claim this privilege, "who was not expressly and circumstantially shewn to be fairly, really and bona-fide a domestic servant in the actual service of the foreign minister, and actually performing the service to him, without collusion; and who is not a trader of any sort, or liable to be described as such." *Widmore v. Alva-*

Cases cited to shew that the nature of the service must be specified.

And what ought to be shewn.

rex. Str. 797. Fitzgib. 200. Holmes v. Gordon M. 7 Geo. 2. B. R. Brettell v. Caroline 17, 18 Geo. 2. B. R. The case of a gardener to a foreign minister who had no garden, the case of Rev. Mr. *Shorthouse* who claimed the privilege as chaplain to the *Morocco* ambassador, a *Mahometan*, and *Johnson v. Stewart M. 1750. 2 Geo. 2. B. R.* which prove that the nature of the service must be particularly shewn. *Dodsworth v. Anderson. Sir T. Raym. 375. Sir T. Jones 141.* where *Grice* who bought goods in *England*, and sold them in *Ireland*, was holden to be a bankrupt in *England*.

It is not expected that every particular act of the service should be specified.

Bona-fide service sufficient.

Lord Mansfield. It is not to be expected, that every particular act of the service should be particularly specified: it is enough if an actual bona fide service be proved. And if such a service be sufficiently proved by affidavit, we must not, upon bare suspicion only, suppose it to have been merely colourable and collusive. As to that of his being a trader; his having been so in *Ireland* (and even that 7 years ago too) will not bring him within the exception of the 5th clause of this act.

There is no colour for bringing this case within that of *Dodsworth v. Anderson*. For here is no connection between the goods bought in *England*, and those sold in *Ireland*. It does not appear they were the same goods: neither is any time specified, when they were brought, or when sold. Rule absolute. *Peach & another v. Bath. 3 Burr. 1478.*

Defendant English secretary to the minister from the Prince Bishop of Liege.

Affidavit of the defendant.

On shewing cause why the defendant should not be discharged out of the custody of the marshall (upon 7 *Anne c. 12.*) as a domestic servant to *Paul Pier Russell*, minister from the Prince Bishop of *Liege*.—"He swore himself to be bona fide English secretary to him, and to have been bona fide hired by him as such, and to have bona fide received wages, as they became due, at the rate of 30*l.* per ann." Both the minister himself, and the relation of this man to him, were objected to.

But *Chilton's* own affidavit was positive, as to the service, and that it was real and not colourable: and it was confirmed by a Mr. *Chamberlayne*, who called himself secretary. He also swore that he was not an object of the bankrupt laws. He had been house steward to Lord *Northington*. No certificate was produced under the hand and seal of the minister; though the application was made (as the attorney alledged) on the part of the minister: Nor was it sufficiently sworn, that the defendant was in the service of the minister at the time when he was arrested.

Defendant's own affidavit positive as to the service.

Lord *Mansfield*. The privileges of public ministers and their retinues depend on the law of nations: which is part of the common law of *England*. And the act of parliament 7 *Anne c. 12*. did not intend to alter nor can alter the law of nations. His lordship recited the history of the act; and the occasion of it and referred to the annals of the time. He said there is not one of the provisions in that act which is not warranted by the law of nations.

Privileges of public ministers part of the law of nations. Act did not alter the law of nations.

The law of nations will be carried as far in *England* as any where; because the crown can do no particular favours, affecting the rights of suitors, in compliment to public ministers or to satisfy their points of honour.

Not one provision in the act, but warranted by the law of nations.

The law of nations though it be liberal, yet does not give protection to screen persons who are not *bona fide* servants to public ministers, but only make use of that pretence in order to prevent their being liable to pay their just debts.

The law of nations carried as far in *England*, as any where, and why.

The law of nations does not take in *consuls*, or *agents of commerce*; though received as such by the courts to which they are employed. This was determined in *Barbuit's case* in *Chancery* which was solemnly argued before and determined by Lord *Talbot*, on considering and well weighing *Barbeyrac*, *Binckershoek*, *Grotius*, *Wincquefort*, and all the foreign authorities: for there is little said by our own writers, on this subject.

The law of nations does not give protection to screen persons who are not *bona fide* servants.

Does not take in consuls, or agents of commerce.

If

Not an ambassador.

Not an application by the Attorney General.

If a minister of such kind as intitles him to privilege, not a case of privilege.

A public minister not to take a man from the custody of the law.

If I did not think there was enough in the present case already appearing to the court, to enable us to form an opinion, I should desire to know in what manner this minister was *accredited*. Certainly, he is not an *ambassador*; which is the first rank. *Envoy*, indeed, is the second class: but he is not shewn to be even an *envoy*. He is called "*minister*," 'tis true: But minister (alone) is an equivocal term.

I find this is not an application by the *Attorney General*, by the direction and at the expence of the crown. That, indeed, would have shewn, the crown thought this person intitled to the character of a public minister. It now remains uncertain what his proper character is.

But supposing him to be a minister of such a kind as intitles him to privilege; yet I think, this is not a case of privilege by the law of nations: for, the defendant does not appear to have been in the service of the minister at the time of the arrest.

A public minister shall not take a man from the custody of the law: though the process of the law shall not take his menial servant out of *his* service.

Here, it is not sworn when the defendant came into the service. And upon the manner of swearing here used, the court must take it. "*That he was not in the minister's service at the time of the arrest.*"

Mr. Justice Aston concurred. The rule laid down by Lord Mansfield is a very right one. The process of the law shall not, indeed, take a person out of the service of a public minister: but on the other hand, a public minister cannot take a person out of the custody of the law. If a man has no such privilege at the time of his being arrested; no subsequent privilege can be given him, by being afterwards taken into the service of a public "*minister*."

Therefore,

Therefore, as it does not appear here, that the defendant was then in the service, he cannot be intitled to his privilege.

This is a true and right principle, and the establishing it may prevent many of these applications.

Lord *Mansfield* took occasion to observe, that the registering the name of the defendant in the secretary of state's office, and transmitting it to the sheriff's office (mentioned in the fifth section,) relates only to the bailiff who arrested him; and is no condition precedent to the being intitled to the privilege of a public minister's servant. In this, Mr. *Justice Aston* also concurred.

Rule discharged. 4 *Burr.* 2015.

On a rule to shew cause why execution should not be set aside, and the goods taken restored; the facts appeared. That the defendant had been protected by the *Morocco* ambassador: upon whose departure from *England* the plaintiff proceeded against the defendant, being then unprotected; and obtained judgment against him. The defendant brought a writ of error. Whilst this writ of error was depending, viz. on 14th *June*, 1764, he was hired to *Count Haslang*, the *Bavarian* minister, as his physician, at 40*l.* a-year salary; though *Doctor Redmond* then stood upon the list, as physician to *Count Haslang*; and even still remains upon the list, as such. The defendant swore that he had prescribed to some of the Count's servants: and he also swore, that since the said 14th *June*, 1764, he never prescribed to any other persons, than the Count's family. It appeared that the defendant kept a coach, and had livery servants of his own. It appeared, that he had formerly been a trader; but had left off: but it was not ascertained where, or for how long time he had practised as a physician. Soon after he was hired to *Count Haslang*, the Count's own secretary sent to the sheriff of *Surrey* (who had an execution against the defendant,) to acquaint him "that the defendant was protected by *Count Haslang*."

Privilege claimed as domestic physician, to a public foreign minister, disallowed, it being a mere scheme to screen him from paying his debts.

Lord

What the privilege extends to.

Lord Mansfield. The privilege of a foreign minister, extends to his family and servants: and this privilege has been long settled to extend to the servants who are natives of the country where he resides, as well as to his foreign servants, whom he brings over with him. By the law of nations, a foreign minister cannot give a protection to a person who is not *bona fide* of his family.

Who he cannot protect.

Person in debt cannot be protected.

Binkershoek de foro legatorum, says, that a person in debt, cannot be taken into the service of a foreign minister, in order to protect him. And indeed this would give the foreign minister a power to dispense with the private debts of the subjects of this country. 3 Burr. 1676. *Lockwood v. Dr. Coysgarne*.

Clerk no servant

A person living as a clerk, is no domestic servant. *Barnes* 264. *Pract. Reg. C. P.* 14.

Assistant officers of both houses.

Assistant officers of both houses of parliament, who repair to parliament by the king's writ of summons or upon legal elections, returns, and continually attend therein, to discharge their duties, during the whole session of parliament, 'till its dissolution, and that during their stay, comings and return from it to their homes are privileged. *Prynne* 4. pt. *Reg. of Writs*, 690. Also the sergeants at arms, and door-keepers, clerks and such like. *Crompt.* 11.

Clergymen.

This venerable body of men, being separate and set a-part from the rest of the people, in order to attend the more closely to the service of almighty God, have thereupon large privileges allowed them by our municipal laws; and had formerly much greater, which were abridged at the time of the reformation on account of the ill use which the Popish clergy had endeavoured to make of them. For, the laws having exempted them from almost every personal duty, they attempted a total exemption from every secular tie. But it is observed by Sir *Ed. Coke*, 2 *Inst.* 4. that as the overflowing of waters, doth many times make the river to lose its proper channel, so in times past, ecclesiastical

ecclesiastical persons, seeking to extend their liberties beyond their true bounds, either lost or enjoyed, not those which of right belonged to them. The personal exemptions indeed, for the most part, continue; for a clergyman cannot be compelled to serve on a jury, nor to appear at a court leet, &c. nor be chosen to serve any temporal office, in regard of his own continual attendance on the sacred function. *Finch L. 88.* During his attendance on divine service, and not merely staying in the church with a fraudulent design, is for the time, privileged from arrests. *stat. 50 Ed. 3. c. 5. 1 R. 2. c. 16.* And by *stat. 8 H. 6. c. 1.* which recites, “forasmuch as the prelates and clergy of

Clergymen called to the convocation privileged, eundo, morando & redeundo.

“the realm of *England*, called to the convocation, and their servants and familiars that come with them to such convocation, oftentimes and commonly be arrested, molested and inquieted; our lord the king willing graciously in this behalf, to provide for the security and quietness of the said prelates and clergy, at the supplication of the same prelates and clergy, and by the assent of the great men and commons aforesaid, hath ordained and statuted, that all the clergy from henceforth to be called to the convocation by the king’s writ, and their servants and familiars, shall for ever hereafter fully use and enjoy, such liberty or defence in coming, tarrying and returning, as the great men and commonalty of the realm of *England*, called or to be called, to the king’s parliament, do enjoy, and were wont to enjoy, or in time to come ought to enjoy.” *Eq. Cas. Abrid. 349. A. pl. 1. 3 Chan. Rep. 22. Prynn 644. Finch 140.*

It is said in *Crompt. Juris. of C. 11. 2 Sid. 31.* Judges.

That the judges, their necessary servants, goods and chattels shall not be arrested, or taken, but in case of treason or felony: but in *Lord Ray. 339.*

“Judges clerks may be arrested.” *Pract. Reg. C. P. 380.* Their clerks.

I

It

Lord mayor it is
said privileged.

It is also said, that the lord mayor of the city of *London*, is privileged from all actions during his mayoralty, in regard of his office, except for felony, &c. this is, that he may not be hindered in the government of the city, which being the metropolis of the nation, is of higher concernment, in respect of the public, than any man's particular interest, 2 *Lill. Abr.* 456. (C.) *Sed q.* I find no writ of privilege for him.

Serjeants at law.

Serjeants at law are not privileged from arrests in the superior courts; but they cannot be arrested in an inferior one. *Cro. Car.* 84, 85. 2 *Lev.* 129. *Freeman* 389. 2 *Mod.* 296. *Lord Raym.* 399. *Serjeant Scrogg's Case*, M. 26 *Car.* 2. in *C. B.* I do not find that barristers are privileged.

Barristers.

Corporations.

Corporations are privileged from arrests, and of course from outlawries, no *capias* lying against them.

Officer of court.

Officers of courts are privileged from arrests, but this privilege is in respect of their necessary attendance on those courts. 1 *Sand.* 67. They are regularly to sue and be sued in the courts they respectively belong to, and cannot (except in certain cases) be impleaded elsewhere; which privilege arises from a supposition of law, that the business of the court or their clients causes, would suffer by their being drawn into any other than that in which their personal attendance is required. 2 *Inst.* 551. 4 *Inst.* 71. *Vez.* 154. But if the sheriff arrests an attorney, he cannot discharge him on a writ of privilege, for he must plead it *sub pede sigilli*. 2 *Black. Rep.* 1085. But a writ of privilege will discharge him if he is arrested in an inferior court.

If attorney arrested must put
in bail and plead
his privilege.

Lord Chancellor
and the masters.

The right of being exempted and freed from arrests by process of other courts, belongs to the Lord Chancellor or keeper and to all the masters. *Crompt. Jur. of C.* 48. b. *Skin.* 521. Curfitors, ministers, and known clerks of the court of chancery, and to the menial servants of the chancellor, or keeper, and of the ministers and officers. *Ord.*

Curfitors, &c.

of Chan. 22 Dec. 5 Car. 1629. Pract. Reg. in Chan. 284.

Clerk of the pells shall have privilege. Comb. 482. Curfitor's clerk. Skin. 521. Auditor of the exchequer, and his servants, commissioners of the treasury, garter, king of heralds, receiver general of the revenues, clerk of the remembrancer, of an attorney of the exchequer, are intitled to privilege. Stand. 164. 2 Sid. 164. pl. 3. Andr. 46. 2 Show. 299. Sav. 131. pl. 204. Order of the house of commons, 27. Nov. 1699. 2 & 3 Ann. c. 18. f. 1.

Auditor of the exchequer and other officers,

The marshall and warden of the Fleet are not to be arrested. 1 Vent. 65.

Marshall and warden.

If an attorney is attending on a judge's summons, the master of the K. B. or prothonotary to tax costs. I take it the officer must not arrest him. Barnes 278. Rep. C. B. 140. nor on the execution of a writ of inquiry. Barnes 173.

Attorneys when protected.

The law not only allows privileges to the officers of the court, but also protects all those whose attendance is necessary in courts; so that if a *suior* is arrested either in the face of the court, or out of the court, as he is going and coming, to attend and follow his suit, and it appears upon complaint made thereof, that the fact was so, the court will not only discharge the party from the arrest, but will punish the officers or bailiffs, as also the plaintiff who procured the arrest, as for a contempt to the court. But I take the law to be, that he *must know* that the party was prosecuting or defending the suit. 2 Lil. Reg. 369. 1 Brownl. 15. Ray. 101. 2 Mod. 181. 2 Roll. Abr. 272.

Plaintiff and defendant.

A party who has attended his cause all day in court, and in the evening retires with his witnesses, at a tavern in *Palace-yard*, held to be privileged from arrests, *causa redeundi*. 2 Blackst. Rep. 1113.

How long party is protected.

Courts of justice, not only protect the parties themselves, but also their witnesses, *eundo & redeundo*.

Witnesses.

Not only protect persons, but all things necessary for his journey.

deunda, properly subpoena'd, to attend the trial, and give evidence: For, since they are obliged to appear by the process of the court, they will not suffer any one to be molested, whilst he is paying obedience to the writ. 1 *Moor* 66. Courts not only protect the person, but likewise all the things that are necessary for his journey; but not merchandise or goods for sale. 2 *Roll.* 273. 3 *H.* 6. 4. The witnesses must have a reasonable time allowed them to get home; therefore, it was held, that the court could not try all niceties of delays that might possibly happen: Therefore, an attachment was granted against the plaintiff and the bailiff, for arresting a woman who attended *Winchester* assizes. The trial ended on *Friday*, and she set off on *Saturday* home to *Portsmouth*, and in her journey was arrested. 2 *Str.* 986.

Jurors.

As jurors are summoned by the process of the court, they are equally obliged to appear there as witnesses; and therefore, are no more to be molested, whilst they are obeying the commands of the court, than witnesses, &c.

Witnesses attending commissioners of bankrupt.

Witnesses properly summoned before commissioners of bankrupt, or other commissioners under the great seal, are privileged from arrests. 1 *Atk.* 54.

Bankrupt is free for 42 days, or such further time as allowed to finish his examination, if not in custody previous to surrender.

By statute 5 *Geo.* 2. c. 30. "Every bankrupt shall be free from arrests, in going and coming to surrender to the commissioners, and from actual surrender for forty two days, or such further time as shall be allowed to finish his examination, (provided he is not in custody at the time of surrender) and, if he be arrested for debt, or on any escape warrant coming to surrender, or after surrender, within the time before mentioned; then on producing the summons, or notice, under the hands of the commissioners or assignees, and giving the officer a copy thereof, he shall be discharged; and in case any officer shall detain such bankrupt, such officer shall

" forfeit

"forfeit to such bankrupt for his own use, 5 l.
"for every day he shall detain him." *f. 5.*

No seaman is liable to be arrested or taken out of his majesty's service, unless the debt amounts to 20 l. 1 *Geo. 2. c. 12. f. 15.* Seaman.

A seaman on the ships books, though he has absented himself, is a seaman within the act. *Barnes 95.*

Nor shall any volunteer soldier, be liable to be taken out of his majesty's service by any process or execution, unless for a real debt of 20 l. 26 *Geo. 3. c. 5.* Volunteer soldier.

"No sheriff or other officer within the principality of *Wales*, or counties palatine, upon any writ or process issuing out of any of his majesty's courts of record at *Westminster*, shall hold any person to special bail, unless affidavit be first made in writing, and filed, out of which such writ or process is to issue, signifying the cause of action, and that the same is 20 l. and upwards; and when the cause of action is 20 l. bail shall not be taken for more, than the sum expressed in such affidavit." 11 & 12. *W. 3. c. 9. f. 2.* Wales, or counties palatine, not to arrest under 20 l.

As for the king's protection granted to any of his subjects by his writ, whereby any immunity or freedom from actions, suits, or arrests, shall be given to any of them, it is to be noted, That the courts of justice, where any such protection is cast, are to allow or disallow of the same, (be they courts of record, or not of record.) But the sheriff, nor any other officer or minister, are to allow or disallow the same. *Co. Litt. 131. a.* Bail for no more than sum expressed.

If the court shall award process to the sheriff, to arrest or take another without cause, and the arrest is made, the sheriff nor his officers are not punishable. 20 *H. 6. 5.* But it must be issued out of a court that hath jurisdiction. 10 *Co. 76. judicium a non suo iudice datum, nullius est momenti.* For the sheriff is bound at his peril, to take knowledge King's protection to any subject from arrests, the courts where such protection is cast, are to allow or disallow same. Sheriff not to allow or disallow same.

If court awards process to the sheriff, without cause, sheriff on arrest not punishable.

of the law: *Ignorantia juris non excusat ministros legis.*

Abuses of goal-
ers, &c. rectified.

Officer may not
carry his prisoner
to any tavern,
&c. without his
consent,

nor charge him
for liquor, &c.
other than such
as he shall freely
and particularly
call for; nor de-
mand for caption
or attendance
any other than
his legal fee,

nor exact any
gratuity, money,

The abuses of goalers and sheriff's officers, to-
wards the unfortunate persons in their custody,
are well restrained and guarded against, by statute
32 Geo. 2. c. 28. which enacts, " That no sheriff,
" under-sheriff, bailiff, serjeant at mace, or other
" officer or minister whatsoever, shall at any time
" or times hereafter, convey or carry, or cause to
" be conveyed or carried, any person or persons,
" by him or them arrested, or being in his or their
" custody, by virtue or colour of any action,
" writ, process or attachment, to any tavern,
" alehouse, or other public victualling or drinking-
" house, or to the private house of any such of-
" ficer or minister, or of any tenant or relation of
" his, without the free and voluntary consent of
" the person or persons so arrested or in custody;
" nor charge any such person or persons with any
" sum of money, for any wine, beer, ale, victuals,
" tobacco, or any other liquor or things, save
" what he, she, or they, shall call for of his, her,
" or their own free accord; nor shall cause or
" procure him, her or them, to call or pay for
" any such liquor or things, except what he, she,
" or they shall particularly and freely ask for; nor
" shall demand, take or receive, or cause to be
" demanded, taken or received, directly or in-
" directly, any other or greater sum or sums of
" money, than is, or shall be by law allowed to
" be taken or demanded for any arrest, or taking,
" or for detaining, or waiting, till the person or
" persons so arrested or in custody, shall have
" given an appearance or bail, as the case shall
" require, or agreed with the person or persons,
" at whose suit or prosecution, he, she, or they,
" shall be taken or arrested, or until he, she, or
" they, shall be sent to the proper gaol belonging
" to the county, riding, division, city, town,
" or place, where such arrest or taking shall be;
" nor shall exact, or take any reward, gratuity,
" or

“ or money for keeping the person or persons so
 “ arrested or in custody, out of goal or prison;
 “ nor shall carry any such person to any goal or
 “ prison within four and twenty hours from the
 “ time of such arrest, unless such person or persons
 “ so arrested, shall refuse to be carried to some
 “ safe and convenient dwelling house of his, her,
 “ or their own nomination or appointment, with-
 “ in a city, borough, corporation, or market
 “ town; in case such person or persons shall be
 “ there arrested, or within three miles from the
 “ place where such arrest shall be made, if the
 “ same shall be made out of any city, borough,
 “ corporation, or market town, so as such dwell-
 “ ing house be not the house of the person arrested,
 “ and be within the county, riding, division, or
 “ liberty, in which the person under arrest was
 “ arrested; and then, and in such case, it shall be
 “ lawful to, and for any such sheriff, or other
 “ officer or minister, to convey, or carry the per-
 “ son or persons so arrested, and refusing to be
 “ carried to such safe and convenient dwelling
 “ house as aforesaid, to such goal or prison as he,
 “ she, or they may be sent to, by virtue of the
 “ action, writ, or process against him, her, or
 “ them. *f. i.*”

nor carry his
 prisoner to goal
 within 24 hours
 after his arrest,
 unless, &c.

“ That no sheriff, under-sheriff, bailiff, ser-
 “ jeant at mace, or other officer or person, shall
 “ at any time or times hereafter, take or receive
 “ any other or greater sum or sums for one or more
 “ night's lodging, or for a day's diet, or other
 “ expences of any person or persons under arrest,
 “ on any writ, action, attachment or process,
 “ other than what shall be allowed as reasonable
 “ in such cases by some order or orders already
 “ made, or which shall hereafter be made by the
 “ justices of the peace, at some general or quarter-
 “ sessions, which shall be held for the county,
 “ riding, division, city, town, or place, where
 “ such arrest or taking shall be, who are hereby
 “ authorised and required with all convenient ex-

Nor may officer
 take for the diet
 lodging and other
 expences of such
 prisoner, more
 than shall be al-
 lowed by an or-
 der of the justices

A copy whereof
is to be hung up
in some conspicu-
ous part of the
session's house,
or other proper
place.

Sheriffs and the
secondaries to
deliver printed
copies of these
clauses to bailiffs,
&c.

And make it a
part of the con-

“ petition, to make some standing order or orders
“ for ascertaining such charges and expences with-
“ in their respective counties, ridings, division,
“ cities, towns, and jurisdictions, if the same have
“ or hath not been already there made; and if
“ any such order or orders hath or have been there
“ already made, such justices for the time being,
“ at their respective general or quarter-sessions,
“ are hereby authorised and required to vary or
“ alter the same, from time to time, as they shall
“ see occasion; and also, are hereby required to
“ cause a copy of every such order, and of every
“ variation or alteration thereof, signed by the
“ clerk of the peace of every such county, riding,
“ division, city, town, or place respectively, to
“ be put and kept in some conspicuous place in
“ the session's house, or some other proper place
“ of every such respective county, riding, division,
“ city, town, or place, as such justices shall order,
“ so as the same may be there seen and examined,
“ as occasion may require.” *f. 2.*

And to the intent that no person may suffer by
reason of his ignorance of the provisions made by
this act, it is further enacted, “ That all and every
“ sheriff, under-sheriff, and bailiff of any liberty,
“ and also the respective secondaries and clerk sit-
“ ters in the respective compters in *London*, and
“ all others persons entrusted with the execution
“ of process, or who shall enter any actions, or
“ make any warrant or warrants, or any writ or
“ process, in order to have the same executed, shall
“ deliver a printed copy of the several clauses con-
“ tained in this act relating to bailiffs, serjeants,
“ and other officers and persons who shall be em-
“ ployed under them respectively to execute any
“ writ, process or attachment, or who shall arrest
“ any person on any action which shall be entered,
“ or otherwise, within their respective jurisdictions,
“ to every such bailiff, serjeant, officer, and other
“ person, and shall make it the condition of every
“ security or bond which shall be given or made
“ to

to any such sheriff or under-sheriff, or bailiff of any liberty, by any bailiff, serjeant at mace, or other officer or person, who shall be employed or intrusted to execute any such writ or process as aforesaid, under him, them, or any of them, that every such bailiff, serjeant at mace, or officer, and other person respectively, shall and will shew and deliver a copy of the said clauses to every person he shall arrest by virtue of any process, action, writ, or attachment, or under any warrant made out thereon, and carry or go with to any public or other house where any liquor shall be sold; and also shall and will permit every such person who shall be so arrested, or any friend of him or her, to read over the same clauses, before any liquor, meat or victuals shall be at any such public or other house called for, or brought to any such person who shall be so under arrest there; and in case any bailiff, serjeant at mace, or other officer or person shall in any respect offend in the premises, every such offence, besides the breach of the condition of every such security bond, shall be accounted and deemed a misdemeanor in the execution of the process or action on which such person was arrested, and shall be punishable as such, by virtue of this act." §. 3.

dition of the bond, &c. that they shall shew, &c. if carried to a public house, and permit him or his friend to read over the same, before any liquor or victuals be brought or called for.

"That every sheriff, under-sheriff, bailiff of any liberty, gaoler and keeper of any prison or gaol, or any other person or persons to whose custody or keeping any one hath been or hereafter shall be arrested, taken, committed or charged in execution, by virtue of any writ, process or action, or attachment, shall at all times hereafter permit and suffer every such person and persons, during his, her, or their respective continuance under arrest or in custody, or in execution for any debt, damages, costs, or contempt, at his, her, or their free will and pleasure, to send for, or have brought to him, her, or them, at reasonable times in the day-time, any beer,

Sheriffs and gaolers to allow debtors in custody to send for, or have brought to them, victuals and beer from what place they shall think fit.

"ale,

And to have and use such bedding, &c.

“ ale, victuals, or other necessary food, from what place he, she or they shall think fit, or can have the same; and also to have and use such bedding, linen, or other necessary things, as he, she, or they, shall have occasion for and think fit, or shall be supplied with, during his, her, or their continuance, under any such arrest or commitment, without purloining or detaining the same, or any part thereof, or inforcing, or requiring him, her or them to pay for the having or using thereof, or putting any manner of restraint or difficulty upon him, her, or them, in the using thereof, or relating thereto; and no such prisoner or prisoners shall pay any thing in respect thereof to any such sheriff, under-sheriff, bailiff of any liberty, gaoler, keeper, or other person as aforesaid.” *f. 4.*

Sheriffs to take no reward,

Sheriffs and their officers ought to take no reward, or other thing for doing of their office, but only of the king or that which is appointed for them to take by the statutes (and laws of this land) and if they do otherwise it is extortion in them. 3 *E. 1. c. 26.* 20 *E. 3. c. 6.* 1 *H. 4. c. 11.* *Co. L. 368.* 23 *H. 6. c. 9.* *Pl. 465.*

The fees as now settled for arrest.

The fees settled by the last act are much altered, for the arrest on mesne process in town, the master allows, 10 *s. 6d.* in the country 1*l.* 1*s.* and if taken to gaol at a distance 1*s.* per mile.

Fees to the sheriffs in Wales.

See the statute 34 *H. 8.* respecting fees to be taken in *Wales.*

Bail.

Definition of bail.

BA I L, *ballium* (from the French *bailier*, which comes from the Greek *βάλλειν*, and signifies to deliver into hands,) is used in our common law, for the freeing or setting at liberty of one arrested or imprisoned upon any action, either civil or criminal, on surety taken for his appearance, at a day and place certain. *Bract, lib. 3. Tract. 2. c. 8.*

The

The reason why it is called *bail* is, because by this means the party restrained is delivered into the hands of those that bind themselves for his forthcoming, in order to a safe keeping or protection from prison; and the end of bail is, to satisfy the condemnation and costs, or render the defendant to prison.

Bail and *Mainprize* are often used promiscuously in our law books, as signifying one and the same thing; and they agree in this particular, that they save a man from imprisonment in the common gaol; his friend undertaking for him, before certain persons for that purpose authorised, that he shall appear at a certain day, and answer whatever shall be objected to him in a legal way. 2 Haw. P. C. c. 88. 4 Inst. 180. The chief difference

Bail and mainprize.

is, that a man's *mainpernors* are barely his sureties, and cannot imprison him themselves to secure his appearance, as his bail may, who are looked upon as his gaolers, to whose custody he is committed, and therefore may take him upon a *Sunday*, confine him till the next day, and then render him. 6 Mod. 31. Lord Raym. 706. 12 Mod. 275.

The difference between them.

By the common law, when the sheriff arrested any one, he was not obliged to release him, without the writ of *homine replegiando*. 2 Saun. 60. Fitz. 2. b. 6 Reg. 77. 22 H. 6. 46. 19 H. 6. 43. 21 Ed. 4. 77 Fitz. N. B. 25. a.

By common law, when sheriff arrested, was not obliged to take surety.

But now by stat. 23 H. 6. c. 9. it is enacted, that all sheriffs, and all other officers and ministers, shall let out of prison all manner of persons, by them or any of them arrested, or being in their custody, by force of any writ, bill, or warrant, in an action personal, or by cause of indictment upon reasonable sureties of sufficient persons, having sufficient within the counties where such persons be so let to bail or mainprize, to keep their days in such places as the said writs, bills, or warrants, shall require (such person or persons which shall be in their *ward* by *condemnation*, *execution*, *capias utlagatum*, or *excommunication*,

Sheriffs shall bail prisoners.

Who to be bailed.

Upon what sureties.

When to appear.

What persons not bailable.

“surety

What bonds may
be taken.

What bonds to
be void.

Before this statute sheriffs used to take bonds, sometimes by oppression and dures, extorted large sums of money from prisoners.

Statute consists
of 2 parts.

With respect to
the Sheriff.

“ surety of the peace, and all such persons which
“ be or shall be committed to ward by the special
“ command of any justices ; and vagabonds refusing to serve according to the form of the statute
“ of labourers only excepted.) And that no sheriff nor any of his officers or ministers aforesaid,
“ shall take or cause to be taken, or make any obligation for any cause aforesaid, or by colour of
“ their office, *but only to themselves*, of any person,
“ nor by any person which shall be in their ward,
“ by course of the law, but by the name of their
“ office, and upon condition written, “ *that the*
“ *said prisoner shall appear at the day contained in the*
“ *said writ, bill or warrant, and in such places, as the*
“ *said writs, &c. shall require.* And if any of the
“ said sheriffs, or other officers, or ministers aforesaid, shall take any obligation in other form, by
“ *colour of their offices*, that it shall be void.”

Before this statute sheriffs, &c. for ease and enlargement of prisoners, and sometimes by oppression and dures, extorted of prisoners, large sums of money by colour of their offices, by which means they became very opulent, the prisoner impoverished, and the proceedings of justice delayed ; for when a man was in execution, the sheriff would set him at large, and take bond to save him harmless, so that the plaintiff's remedy was to sue the sheriff for an escape, by which he was put to great expences ; and when he recovered, he had only his taxed costs, and the debt without any interest ; by this contrivance, before the making of the statute, plaintiffs became tired with the trouble and charge attending such an action, and rather than prosecute, they compounded for half their demand.
10 Rep. 102. Plowd. Com. 67. b.

This statute consists of two parts, the one for the benefit of the sheriff, the other for the party arrested. Cro. Eliz. 808. Clifton v. Webb.

That which respects the benefit of the sheriff is, that he shall take bonds with sureties for the indemnifying himself, which if he be amerced, he

he may sue against the parties bound ; or if he be sued for not having the body at the day, he may plead in bar. And it hath been determined that he may take *one surety*, for it is at his own peril, and he is left at his own discretion to take one, two, or more securities as he thinks fit. *Cro. Eliz.* 72. 808. And he may take it of one who has nothing in the county. *Ibid.* 862. 624. 808.

But not bound to take less than two. *Cr. Eliz.* 862.

The act means, that the sheriff shall take security on such writs as require special bail only, and not on executions, *Cro. Eliz.* 647. And therefore that he may take bond to appear on an attachment for contempt, out of the court of chancery. *Stiles* 234. For want of *appearance*, or *answer*, and *not for costs*.

The act means that he shall take security only on writs that require special bail.

By this act an officer is obliged to admit a man to bail, if they are sufficient and unexceptionable, when offered him. It is his duty to do it. And it is the principle of the common law, that an officer ought not to take money for doing his duty. *Burr.* 628. If the taking of money for doing his duty, was permitted, it would introduce such a scene of oppression, as would be insufferable. *Ibid.*

Obliged to admit to bail.

If the bailiff take money for letting persons out on bail, he is punishable by attachment or indictment. *2 Burr.* 927.

The clause for the benefit of the party is, that the sheriff under colour of his office, should not oppress the party, to make him any other manner of obligation, than what is there prescribed. *Pl.* 67. *a.* for when he has accepted the security, he is supposed to be saved harmless.

That which respects the benefit of the party.

There are three forms to be observed, for bonds on this statute.

Three forms observed in bond.

1. *It must be made to the sheriff himself.*
2. *To him by the name of his office.*
3. *That it shall be only for appearance at the day.*

Therefore where a bail bond was without the words *ubicunque* &c. although the *capias* was, *coram dom. rege ubicunque tunc fuerit in Anglia*, the defendant

Bail bond when good.

No set form.

Phillips v. Phillips in Scacc.

If made to appear out of term void.

Bond in double the sum:

Shall take bail for no more than sum indorsed on the writ.

Stat. 23 H. 6. to be pleaded.

How much to take for bond.

Penalty for taking more than here allowed.

dant pleaded the stat. H. 6. that the sheriff could take no bond, but such as was to appear at the place in the writ mentioned; Whereas, this might be to compel an appearance out of England, if the king should happen so to be. *Sed per cur.* there are no set form of words for these bonds; but if in substance, "they are to appear according to the design of the writ," it is sufficient. 2 Cro. 286. 2 Vent. 237. 2 Show. 51. 2 Lev. 180. on a *quominus*, the bond was to appear in the office of pleas in the court of exchequer at *Westminster*; and held well enough, though the process was to appear before the barons: we well understand, that before the king, is meant before the king in his court; and not before the king in person. Judgment for the plaintiff. *Shuttleworth v. Pilkington*, 2 Str. 1155. If a bond be taken to appear on a day out of term, it is void, the statute need not be pleaded, nor the sheriff amerced. *Mills v. Bond*, 1 Str. 339. 2 Sid. 129. *L. Ray*. 353. The general rule is to take the bond in double the sum sworn to. By stat. 1 W. & M. c. 2. s. 10. the sheriff ought not to require excessive bail. To remedy this, the stat. 12 Geo. 1. c. 29. s. 2. enacts, "that the sheriff or other officer to whom the writ or process is directed; shall take bail, for no more, than the sum indorsed on the back of such writ." It is laid down, that this is a particular private law; and must be pleaded. *Saund*. 154. 2 Burr. 928. "The sheriff or his officer by this act is to take no more for such obligation, warrant or precept than 4 *d*. s. 9. And that all sheriffs, under-sheriffs, clerks, bailiffs, goalers, coroners, stewards, bailiffs of franchises, or any other officers or ministers, which do contrary, shall lose to the party treble damages, and forfeit 40 *l*. one moiety to the king, and the other moiety to the party that will sue. s. 11.

"The

"The fee for a bail bond, is not as I can learn, settled; but I have heard that the sheriff is intitled to 4 s. 6 d. for a bail bond; and if he attends out of his office 6 s. 8 d."

If the sheriff arrest a man in his own county, and afterwards carries him into another county, and there detains him, untill he hath given him a bond for appearance, this bond, it is said, is out of the statute. *Cro. Jac. 745. Dalt. 525.*

Arrest in one county and takes bond in another.

It is clear that the sheriff must take the bond, by the name of his office, *Cr. Eliz. 862.* and the court held in error, that it sufficiently appeared so on the whole declaration being laid, "*solvend' eidem vicecomiti & assignatis.*" *Str. 893.*

Must take bond in the name of office.

It has been held, that neither the place where the bail was taken, nor the sheriff's intention to deceive the plaintiff of his debt, by taking insufficient bail, as alledged, is not traversable. *Sid. 96. pl. 24.* therefore the bond may be taken out of the county. *Str. 444, 643.* For if the arrest was traversable, it would be a way to avoid all bail bonds civilly taken, without exposing the party to an arrest.

Neither the place where bail bond taken, or insufficiency of bail traversable.

A bond made to the marshall, conditioned that if A. P. a prisoner in B. R. continues a prisoner, and in the safe custody of the plaintiff, or of his deputy, untill he should be discharged lawfully, is held good. *1 Saund. 161. Lenthall v. Cook.* For the prisoners of the K. B. being so numerous, that the house cannot hold them, but are permitted to lodge within the rules, and consequently there is a good reason, to take security for their true imprisonment. *Lev. 254.*

A bond made to the marshall to continue prisoner, good.

If a capias be taken out against the defendant and a third person gives the plaintiff a bond, that the defendant shall pay the money or render himself at the return of the writ, it is good, because it was by the direction of the officer. *2 Mod. 305.*

If capias against defendant, third person gives bond to pay, good.

On a joint bill of *Middlesex* against three, with an *acœtiam super scriptum obligatorium* by them jointly and severally, the sheriff took one bail bond for

Bill of Middlesex against three with acœtiam, jointly and severally

rally, the sheriff take bond for appearance of the three, bail bond not according to statute being for a joint appearance.

Bond for appearance before process comes.

Mistake of the day.

Where sheriff may take bail on process that does not express the cause of action.

Plaintiff may take an assignment of the bond.

Assignment no new thing.

Sheriff at request of plaintiff or his attorney shall assign the bail bond.

for the appearance of them three, and there being no appearance, the plaintiff took the bond, and now would have had the sheriff amerced. It was agreed, that the bail bond was not according to the statute, being for a joint appearance to several actions. 6 *Mod.* 122.

If the sheriff takes an obligation for the appearance of *J. P.* before process comes to him, to arrest *I. S.* and after the process comes, this obligation is good. *Sid.* 157. *Keb.* 554.

Bill of *Middlesex* was returnable on *Friday*, the condition of the bail bond was, if the defendant appeared on *Saturday*; it is a void bond. *Saund.* 21, 22.

If a sheriff arrests defendant on an attachment for want of appearance or answer in chancery or the exchequer, or in the exchequer of pleas for want of appearance, he may take a bail bond in 40*l.* for the appearance of such defendant, stat. 13 *Car.* 2. ft. 2. c. 2. And that upon appearance on the return of such writ by attorney, bond to be discharged: and the sheriff not to be amerced. *Ibid.*

The next thing is, if the defendant does not appear according to the condition of the sheriff's bond, the plaintiff may take an assignment thereof, if he thinks proper, pursuant to the statute, 4 *Ann.* c. 16.

It seems that previous to this statute, it was no new thing for the sheriff to assign his bond to the plaintiff; but then such assignment was not good, being a chose in action, yet the plaintiff might sue in the sheriff's name, and recover, provided the sheriff did not release to the defendant, to prevent which by said stat. 4 *Ann.* c. 16. s. 20. it is enacted, "that,

" If any shall be arrested by process out of the
" courts at *Westminster*, at the suit of a common
" person, and the sheriff or officer taketh bail, the
" sheriff at the request and costs of the plaintiff,
" or his attorney, shall assign the bail bond, to
" the plaintiff, by indorsing the same, and at-
" testing

“ testing it under his hand and seal in the presence of two witnesses, without stamp, provided the assignment be stamped before any action be brought thereon.” 4 Ann. c. 16. s. 20.

On a case at the assizes, the question was, whether a bail bond was well assigned by the under-sheriff's clerk.

Parker, C. J. said, he had the advice of all his brothers, and they were of opinion, that an under-sheriff himself might assign a bail bond, in the name of the high-sheriff, it having been the constant practice ever since the statute, 4 Ann. but that if the assignment was neither by the high-sheriff, nor his under-sheriff, it would not be good, and that being the present case, the defendant had judgment. Stra. 60. 10 Mod. 288. Kitson v. Fagg.

Under-sheriff's clerk cannot assign bail bond.

The practice I believe is altered in favour of suitors; for the clerks in office, both in *Middlesex* and *London*, assign all bail bonds in the name of the sheriff, and deliver them as the act and deed of such sheriff. Neither the under-sheriff of *Middlesex*, or the secondaries of *London*, ever attend the office, and I have known the agents in *London*, to under-sheriffs, frequently seal and deliver the bond many years, but can find no contradiction to this case.

The practice, is, I believe, altered.

Sheriff or under-sheriff may assign the bail bond out of his county. 2 Stra. 727. Lord Ray. 1455. Fort. 566.

May assign out of the county.

The sheriff (although he be out of office) may assign the bail bond given to him; in this case he does it as late sheriff. Fortes. Rep. 364.

Late sheriff may assign.

“ If any person be outlawed and arrested upon a *capias utlagatum*, in the king's-bench, it shall be lawful for the sheriff (in all cases where special bail is not required) to take an attorney's engagement under his hand to appear for the said defendant, to reverse the said outlawries, and thereupon to discharge the said defendant from such arrests.”

If any person be arrested on a *capias utlagatum* in K. B. sheriff if no bail required may take an attorney's hand to appear.

K

“ And

If it requires bail, sheriff may take bond with one or more surety for appearance by attorney, and do, and perform, &c.

Persons taken as before, shall be discharged, giving security after return of the writ.

In the common pleas, whether a sheriff can take bail on a *capias utlagatum*, or not, is doubtful, the act having retrospect only to the K. B.

The sheriff cannot arrest on an attachment for contempt.

“ And in those cases where special bail is required by *the said court*, the said sheriff shall and may take security of the defendant, by bond, with one or more surety, *in double the sum*, for which bail is required, and no more, *for his, her, or their appearance by attorney in the said court, and do and perform such things, as shall be required by the said court;*” and after such bond taken, to discharge the defendant from such arrest. 4 & 5 W. & M. c. 18. s. 3, 4.

“ If any person shall not be able within the return of such writ, to give security as aforesaid, (*in cases where special bail is required,*) so as he or they are committed to gaol for default thereof; that whensoever the said prisoner or prisoners shall find sufficient security for his or their appearance to the sheriff by attorney, *at some return of the term then next following, to reverse the said outlawry, and to do and perform such other thing and things, as shall be required by the said court;* such sheriff shall discharge the defendant out of prison.” *Ibid.*

Crompt. Cases in Pract. 26. says, All persons on a *cap. utl.* in *C. P.* have been bailable since making of the statute, and before might have been discharged by *superfedeas*. But there seems to be no warranty, for the sheriff to take the bail, in *C. P.* therefore, stat. 13 W. 3. stat. 2. c. 2. s. 4. which says, that no sheriff, &c. shall discharge any person on a writ of *capias utlagatum* out of custody, without a lawful *superfedeas*, and the rule, *H. 15 & 16 Car. 2.* in *C. P.* must be adhered to, in this respect, unless there is some authority to warrant the taking of bail.

If the sheriff arrests on an attachment for contempt in any of the superior courts, in this case, the sheriff cannot take bail, but the party must put in bail before a judge to answer such contempt. 2 Salk. 608. *Stile* 234. *Abrid. Cas.* 29. 355.

*Preceding and succeeding Sheriff;
acts necessary to be done by each.*

THE new sheriff is not chargeable with such things which are executed before that they are delivered over to him by the old sheriff. *Cro.*

New sheriff not chargeable before delivery.

Eliz. 365. For, if the prisoner takes a man in execution, and afterwards a new sheriff is made, and before the old sheriff delivers his prisoner to the new sheriff, the prisoner escapes; here the old sheriff only is chargeable for this escape, and not the new sheriff, for the new sheriff shall not be chargeable for no other prisoners, than what are delivered over to him by indenture. *Hob.* 266.

For what prisoners the new sheriff shall be chargeable.

1 *Bulstr.* 70. 79. 2 *Leon.* 54.

If the old sheriff after he is discharged, shall make his warrant or precept to any of his late bailiffs or officers to arrest another, and the officer by force thereof, shall arrest the party, an action will lie against both the sheriff and officer. *Dalt.*

If old sheriff after he is discharged, shall make warrant, and officer arrests.

18. *Crompt. of Courts*, 205.

The old sheriff returned the proclamation upon an exigent, after that, he was discharged of his office; and by the judgment of the court, the outlawry was held void, and the party discharged.

Old sheriff returned proclamation, after that discharged, the outlawry void.

Dyer 41.

All writs, are by view and by indenture precisely to be set over by the old sheriff to the new; and if they have been executed by the old sheriff, they must be returned by him, or in his name thus: *This writ as indorsed, was delivered to me by R. S. knight, the late sheriff my predecessor, at the going out of his office, A. B. esq; sheriff.*

All writs are by view, &c. to new sheriff; if executed by old sheriff, new sheriff to return writ.

If the return of the old sheriff happen to be erroneous, and that a new sheriff be chosen; yet the court may cause the old sheriff, or his undersheriff, clerk or deputy, to amend the same. *Dalt.*

If return of old sheriff erroneous, new one be chosen; court to order old sheriff, &c. to return.

19.

K 2

Generally

Sheriff who begins execution, shall finish.

Process may be to the old sheriff to bring in the body in K. B.

C. P. by rule.

Sheriff on *fi. fa.* seized goods to the value of the debt, and paid part, and goods not sold nor writ returned, sheriff discharged, he may sell without *venditioni exponas*.

Sheriff sold goods on *fi. fa.* and on *vend. exponas* returned, want of buyers, then his office determined and he detained the goods, no other remedy but *distringas*.

Two sorts of *distringas*.

Usual *distringas*.

If money be paid to the old sheriff, and he is discharged before return of writ, &c. not to pay again.

Generally the sheriff who begins an execution shall finish it, though his office is expired; therefore, process in some cases, may be to the old sheriff, to bring in the body of a prisoner, and that is, when before he hath made a return of *cepi corpus, et paratum habeo*, and afterwards he is removed, and a new sheriff made, or non-appearance of the prisoner, process shall go to the old sheriff by *distringas* in the K. B. *Bulst.* 82. and by rule to bring in the body in C. P.

A sheriff upon a *fi. facias*, seized goods in his hands to the value of the debt, and paid part of the debt; and the goods not being sold, nor the writ returned, the sheriff was discharged, and afterwards sold the residue of the goods without any *venditioni exponas*; and by the court, the sale is good; for the writ of *fi. facias*, gave authority to him to sell without any other writ. *Roll. Abr.* 893. *Salk.* 323.

Sheriff sold goods upon a *fi. fa.* and upon a *vend. exponas*, he returned, that he could not find buyers, then his office determined, and he still detained the goods in his hands; it was said, the plaintiff had no other remedy against the old sheriff, but to have issues upon him. *Latch.* 117.

There are two sorts of *distringas*, one to distrain the old sheriff to sell, and bring in the money, the other to sell, and deliver the money to the new sheriff to bring it into court; which plainly shews his authority continues by virtue of the first writ. *Salk.* 323. 2 *L. Ray.* 1074. 1075. 11 *Mod.* 34, 35. The *distringas* which commands the new sheriff to distrain the old one to sell, and bring in the money, is the most usual. 6 *Mod.* 299.

If money be paid to the old sheriff, and he is discharged before the return of the writ, the party shall not be compelled to pay it again; and the plaintiff may have his remedy against the ancient sheriff, if he will. *Cro. Eliz.* 208, 209. *pl.* 4. *Sav.* 123. *Ander.* 247. *pl.* 260.

By 3 Geo. 3. c. 15. s. 9. "When a sheriff shall by process out of the exchequer, extend any goods, &c. into the hands of his majesty, for any debt due to the crown, and shall die or be superseded before a *vend. exponas* be awarded for sale, or before he has made actual sale thereof, and a writ shall be afterwards awarded to a subsequent sheriff, who shall make sale of such goods; the barons of the exchequer, &c. shall settle the fees, &c."

If on a warrant directed to the bailiff of a franchise to execute a writ; this is served, and afterwards, and before the return thereof, the bailiff is removed, and a new one elected, the return to the sheriff shall not be in the name of the elder bailiff, but of the new bailiff, for the elder bailiff is now a mere stranger. *Roll. Abr.* 457.

But if a writ directed to the sheriff, is not executed by him, and nothing done in the execution thereof, before the old sheriff is removed, but afterwards the new sheriff executes it, this shall be returned generally in the name of that sheriff which executed it, without making any mention of his predecessor. *Ibid.* 458.

The same law is likewise in the case of a bailiff of a liberty. *Ibid.*

If a writ be executed by one sheriff, and before return of it, a new sheriff is chosen, he ought to return the writ, and not the old sheriff, because the new sheriff is now the officer of the court, *for none can make the return of a writ, but such a person who at the time of the return, remains an officer to the court.*

If a sheriff levies goods, and dies before satisfying the plaintiff, an action of debt well lies against his executors. *Cro. Car.* 539, 540. But where the sheriff is chargeable in his life time for a personal tort, or misfeasance, there his person is only chargeable, and *actio moritur cum persona*. *Ibid.*

A *fi. fa.* was delivered to the under-sheriff, who executed it the same day that the writ of discharge

When sheriff shall extend goods, &c. for debt due to the crown, and dies before vend. expon. &c. and writ awarded to new sheriff, who shall make sale, barons to settle the fees.

Warrant to bailiff of a franchise, this served, and before return, bailiff removed, and new one elected, return to be made by the new sheriff.

But if not executed before the old sheriff be removed, afterwards sheriff executes it, to be returned by sheriff who executed it.

Same law as to a bailiff.

Who is to return writ.

If sheriff levies, and dies, liable to an action.

A *fi. fa.* executed same day writ of discharge

came to the sheriff, held that the old sheriff was chargeable.

The return of one sheriff, not to conclude the other.

In all cases, a writ of *distringas* goes against the old sheriff if writ is executed.

Where new sheriff chargeable on arrest by the old sheriff.

came to the high-sheriff; but, because it could not be proved, that the under-sheriff had notice of the writ of discharge before the execution executed; it was held by the court, that the execution was well executed, and that the old sheriff was chargeable for it. *Cro. Eliz.* 440. *Boucher v. Wiseman.*

The return of the one sheriff shall not conclude the other. *Br. Ret. Writs.* pl. 5. 3 *H.* 6. 56.

A writ of discharge was delivered to the sheriff, his under-sheriff not knowing it, makes execution in the county, and adjudged no execution, and yet sheriff no trespasser. *Dyer* 315. *Mar.* pl. 36. cites *E.* 44 *Eliz.* C. B.

Walmesley cited in that case a judgment, that execution by bailiff after *superfedeas* delivered to the sheriff, is void. *Ibid.*

In all cases where the sheriff is out of office after return of his writ, a writ of *distringas* is to be directed to the new sheriff to distrain him, and he shall return issues upon him. 11 *Mod.* 36.

Where the old sheriff arrests a man, and afterwards returns a *languidus in persona*, and afterwards in *exitu ab officio*, delivers him to the new sheriff charged with the arrest, and then the new sheriff suffers him to escape; here the new sheriff is only chargeable with the escape, and although the old sheriff returned a *languidus in persona*, yet that is not material to the plaintiff, he remaining always in prison, and that return was only to excuse the bringing of the prisoner at the day. *Cro. Jac.* 380.

Of his raising the Posse Comitatus.

BY the common law the sheriff may raise the *posse comitatus*, or power of the county, that is, such a number of men as are necessary (after resistance) for his assistance in the execution of the king's writs; and every man is bound also by the common law to assist him, but also his bailiffs, that hath his warrant in that behalf, for the sheriff cannot do it all himself; if they refuse, being required, they shall be fined and imprisoned.—

By common law the sheriff may raise posse comitatus.

And every man is bound to assist him.

2 *Inst.* 193.

All knights, gentlemen, yeomen, labourers, servants, apprentices, and villeins, and likewise wards and other young men that be above the age of 15 years, shall be compelled to attend. But not women, ecclesiastical persons, and such as be decrepit, or do labour of any continual infirmity. *Lamb. Eiren. l. 3. c. 1.*

Who are to attend.

But notwithstanding what was allowed and enjoined by the common law, it was thought necessary by positive laws to remedy the great inconveniency which there was in antient times by the resistance given to the king's writs, and therefore the statute *W. 2. 13 Ed. 1. c. 39.* enacts as follows, "Also false answers, that they could not execute the king's precept for the resistance of some great men, redound much to the dishonour of the king. And as soon as the bailiffs testify that they found such resistance, forthwith all things set apart (taking the power of the shire) the sheriff shall go in person to do execution; and if he find his under-bailiffs false, he shall punish them by imprisonment, and if he find them true, he shall punish the resisters by imprisonment, from whence they shall not be delivered without the king's special command. And if the sheriff find resistance, he shall certify to the court the

Yet notwithstanding what was enjoined by the common law, yet necessary to remedy the inconvenience by statute law.

“ names of the resisters, aiders, consenters, commanders and favourers.”

The construction of this act extends to executions only, and not to mesne process.

It was adjudged he may take posse comitatus.

Must take after resistance.

If distress be impounded in a castle, sheriff may raise posse comitatus.

Sheriff not confined to numbers.

Sheriff's officer took 300 and held lawful.

But bailiff must have warrant from sheriff to do it.

If he takes posse without cause, yet all discharged, and may justify.

The words of this statute have been construed to extend to executions only, and not to writs on mesne process; and that the sheriff was not obliged to raise the *posse comitatus*, where the party was bailable, for that it cannot be presumed, that in such cases, the king's writ will be disobeyed. 1 *Roll. Ab.* 807. 1 *Roll. Rep.* 388. 440. *Cro. Jac.* 419. It was adjudged and agreed by the court, that though the sheriff was not obliged, that yet he may take his *posse* to serve mesne process. *Cro. Eliz.* 868. 2 *Lev.* 144. 3 *Lev.* 46. *Noy.* 40. *Moor.* 852.

But he must take it after resistance, and not before; for *sequi debet potentia justitiam, non præcedere.* 2. *Inst.* 454.

By *W. 1. c. 17.* If a distress be impounded in a castle or fortress, and detained, the sheriff or bailiff taking with him the power of the shire, &c. may cause the said castle or fortress to be beaten down.

The sheriffs are not confined to any number of persons, but it is referred to the discretion of the sheriff, &c. what number they will have to attend upon them, and how and in what manner they shall be armed, weaponed, or otherwise furnished. *Dalt.* 355.

The sheriff's bailiff to execute a replevy, took with him 300 men armed, and held lawful, for the sheriff's officer, hath power as well as the sheriff. 3 *H. 7. 1. Dalton. Ibid.*

It seems when the power of the county is to be raised or taken, that the bailiff must have warrant from the sheriff to do it, and that he must be a known bailiff or officer, that must do it. *Ibid.*

If the sheriff, &c. shall take *posse comitatus* with them, without any sufficient cause, yet such as therein shall be aiding to the sheriff or his said officers or servants, may well justify such their doing by the commandment of the sheriff or his said officers, &c. 5 *H. 7. 4. 5.*

The

The sheriff is bound to do and make executions at his peril, for if he take the defendant on a *ca. sa.* and he is rescued from him, before he can bring him to prison, though he returns the rescue, yet this shall not excuse him, for when judgment is passed, and he and his bail do not surrender him, nor pay the condemnation money, therefore the sheriff ought to take the *posse comitatus*; and consequently cannot be a good return, that he took the body, but that it was rescued; and the party may have an action of escape against the sheriff on this return; and this is provided by the statute *W. 2. c. 39.* which was made to prevent sheriffs from returning rescues to the king's writs. *Cro. Jac. 419. 1 Roll. Rep. 388. 440. 3 Bulstr. 198.* But to mesne process he may return rescue. *3 Lev. 46.*

Bound to execute executions, therefore to raise posse, &c.

The reason why such return is not good is, that antiently every man, being in *decenna*, had bail, and now is presumed to have bail ready to be answerable for his forthcoming, and therefore the sheriff is not obliged in duty to take the *posse comitatus* to assist him; but when judgment is passed, and his bail do not surrender him, nor pay the condemnation money, then a *capias ad satisfaciend.* issues, to which there can be no bail, and then it is presumed, that he will not be forthcoming, because neither he nor his bail, have satisfied the judgment; and therefore the sheriff ought to take the *posse comitatus* and consequently cannot be a good return that he took the body, but that it was rescued; and the party may have an action, or a new *capias* for the return of an ineffectual execution; but if the sheriff had permitted him to go at large, he could have had no execution, for an effectual execution is returned, and so there is a pledge for satisfaction in the custody of the sheriff, for which he is only answerable. *1 Ro. 904. Cro. Car. 240, 255.*

The reason.

If the sheriff takes goods on an execution, he cannot return rescued, because he ought to have taken the *posse comitatus*; and if he returns a rescue, he charges himself with the seizure. *Sand. 343. Mildmay*

Mildmay v. Smith. 2 Roll. Rep. 57. where it was held, that a return of rescue was no excuse to the sheriff; for he might have taken the *posse comitatus*.

Sheriff may raise power of the county.

The sheriff, if need be, may raise the power of the county to assist him in the execution of a precept of restitution, and therefore if he make a return thereto, that he could not make a restitution by reason of resistance, he shall be amerced. *Lamb.* 157.

Not to raise posse comitatus on civil process, unless they find resistance.

But though it be the duty of a sheriff or a minister of justice, having the execution of the king's writs, and being resisted in endeavouring to execute the same, to raise such a power as may effectually enable them to overpower any such resistance; yet it is said, not to be lawful further to raise a force for the execution of a civil process, unless they find a resistance, and it is certain they are highly punishable for using any needless outrage or violence therein. 3 *Inst.* 161. 2 *Inst.* 193. *Hob.* 62. 264.

Two sheriffs considered.

In London and Middlesex both sheriffs make but one.

If one dies, office at an end.

The beginning of the custom is founded on the charter of K. J.

IN London and Middlesex, it has been already observed, both sheriffs make but one in both counties; and therefore it seems to be a good cause of challenge, if the writ appears to be returned by one sheriff only; and if one of them dies, the office is at an end till another is chosen. The first beginning of this custom seems to be upon the foundation of the charter of *King John*, who granted the sheriffwick of London and Middlesex to the mayor and citizens of London at the farm of 300*l.* per annum. So that being a grant in fee of the sheriffwick to them as a corporation, they had a right to name one or more officers, in order to execute the same; and they thought it proper to name two officers indifferently, to execute both offices, and both of them to execute as one sheriff, though

though the writ in *Middlesex* is directed to them as one, viz. *Vic' Com' Middx. præcipimus tibi*, in that of *London*, *Vice comitibus London' præcipimus vobis*: and the reason of this difference seems to be, that before this grant of the sheriffwick to the corporation, the corporation nominated to the crown and the crown appointed the sheriffs for *London*, and the *London* sheriffs were responsible to the king for the *London* profits of the sheriffwick, and that was the reason why two were appointed, that both might be responsible; and this nomination was, that the citizens might exhibit to the king responsible persons; and that seems to be the reason, that in many of the corporations that are cities and counties, there are two sheriffs; but when by the charter of *King John* the sheriffwick of *London* and *Middlesex* was granted to the citizens as a perpetual fee farm, then they entered their sheriffs, which before were nominated for *London* only, and the election of the two, was for both sheriffwicks, but the direction of the king's writs were as before viz. in *London* to the two sheriffs, and in *Middlesex*, as if there was only one. *Gilb. H. C. B.* 136, 137. 3 *Co.* 72. 1 *Show.* 289, 162, 163. 2 *Show.* 262, 286. *Lev.* 284. *Hob.* 70. *privi. Lond.* 5, 6, 7, 272, 273.

Reason why called in *Middlesex* one sheriff, and *London* two.

An information was brought against three, whereof one of them was one of the sheriffs of the city of *Chester*, and the *ven. fac.* was awarded to the other sheriff. It was suggested on the roll, that one of the sheriffs is party. Question was, whether it was good? And it was adjudged to be well awarded. And as to an objection which had been made, that both are but one officer in law; it is plainly otherwise; for where there are two sheriffs, and one is challenged, the other shall supply that defect, and not the coroner; for he is not the person to execute the process of the court, but only where the proper officer is wanting, which cannot be where there is one sheriff. 4 *Mod.* 65, 66. *K. & Q. v. Warrington.* 21 *H.* 6. 8. pl. 17. 1

Information against three, one of them, one of the sheriffs of *C.* and *ven. fac.* awarded to the other sheriff; it was suggested on the roll one was a party, held that where there are two, and one a party, the other shall supply the defect.

Coroner not the person to execute but where the other sheriff is wanting.

Salk.

Salk. 152. says, for the other may execute the writ, but he does it in the name of both. *Show.* 327. *Accord. Comb.* 191. 12 *Mod.* 22. *S. C. Carth.* 214. cites it as so held in the cases of *Bethel v. Harvey*, and of *Rich v. Player*.

Two sheriffs make but one officer, if one dies, office at an end.

Where there are two sheriffs, they regularly make but one officer, and therefore if one of them dies, the office is an end until another is chosen, and the courts of *Westminster* can award no process to the other. 4 *Mod.* 65. 1 *Show.* 289.

One sheriff makes his return without the other, no return.

If one sheriff of *London* make his return without his fellow, this being as no return at all, is not aided by the statute, which aids insufficient returns, for the court takes notice that one sheriff there is two persons. *Hob.* 70. *Lit. Rep.* 129.

Error to reverse an outlawry.

In a writ of error to reverse an outlawry, among other errors it was assigned that the direction of the exigent to the sheriffs of the city of *Lincoln* was *quo capias corpus ejus ita quod habeas corpus ejus*, &c. where, they being two sheriffs the writ ought to have been *capiatis & habeatis*; *sed non alocatur*; for they both be but one officer to the court; and although in the end of the writ it is *ita quod habeatis ibi hoc breve*, yet there is no repugnancy, for it is good both ways. *Cro. Jac.* 576. *Gargrove v. Markham*.

If two sheriffs and action against both for an escape, if one dies, writ shall not abate.

If there are two sheriffs of the same place, and an action is brought against them both for an escape, if one of them dies, yet the writ shall not abate; for it being in the nature of a trespass, and merely personal, the party can only have remedy against the survivor. *Cro. Eliz.* 625. *Benion v. the sheriffs of York*.

A prisoner in Wood-street on a plaint, escaped, action brought against both sheriffs, and held good, tho' they have different compters, and

A prisoner in *Wood-street Compter*, on a plaint against him, escaped; whereupon the plaintiff brought his action against both sheriffs of *London*; and on demurrer to the declaration, the plaintiff had judgment; and it was resolved, that though the plaint was levied before one defendant only in his court, and prisoner escaped out of his compters, yet

yet that both sheriffs had the custody of the prisoners in both compters, and by consequence the action was well maintainable against both. *Car.* 145. 1 *Show.* 162.

plaint levied before one only.

Execution.

Capias ad satisfaciendum.

AFTER final judgment obtained, and the same be not suspended, superseded, or reversed, the next step is the execution of that judgment, or putting the sentence of the law in force. This is performed in different manners, according to the nature of the action upon which it is founded, and of the judgment which is had or recovered.

After final judgment obtained, and same not suspended or reversed, execution is to issue.

Execution in actions where money only is recovered, as a debt or damages (and not any specific chattel) are of five sorts : either against the body of the defendant, or against his goods or chattels ; or against his goods and the profits of his lands ; or against his goods, and the possession of his lands ; or against all three, his body, lands, and goods.

Execution where money is recovered are of several sorts.

The first of these species of execution is by writ of *capias ad satisfaciendum*, which is a writ of the highest nature, inasmuch as it deprives a man of his liberty, 'till he makes the satisfaction awarded, and therefore when a man is once taken in execution by the sheriff, on this writ, no other process can be sued against his lands or goods only, by *stat. 21 Jac. 1. c. 24.*

Capias ad satisfaciendum what sheriff to do.

If defendant dies, while charged in execution upon this writ, the plaintiff may, after his death, sue out new execution against his lands, goods or chattels. By this writ, the sheriff is directed to take the body of the defendant, and have him at *Westminster*, on a day therein named, to make the plaintiff a satisfaction for his demand. And, if he

If defendant dies in execution, plaintiff may have one against his lands, &c.

Sheriff if he takes the defendant on this writ he is to keep him in safe custody.

He is not to indulge him, and why.

If a *ca. sa.* against two or more.

Cannot to this writ return a rescue.

May not break doors, &c.

Except where the king is a party and then the general rule is excepted.

But he ought first to acquaint, &c.

he does not then make satisfaction, he must remain in custody till he does.

When the defendant is once in custody upon this process, he is to be kept in *arcta & salva custodia*: and, if he be afterwards seen at large, it is an escape; and the plaintiff may have an action thereupon for his whole debt. For though, upon arrests and what is called *mesne process*, being such as intervenes between the commencement and end of a suit, the sheriff, till the statute 8 & 9 *W. 3. c. 27.* might have indulged the defendant as he pleased, so as he produced him in court to answer the plaintiff at the return of the writ: yet upon a taking *in execution*, he could never give any indulgence; for, in that case, confinement is the whole of the debtor's punishment, and of the satisfaction made to the creditor.

If a *ca. sa.* be against two or more, the sheriff may take the bodies of all in execution. 5 *Rep.* 86. 11 *Rep. Godfrey's Case.*

A rescue of a prisoner in execution, either going to goal or in goal, or a breach of prison, will not excuse the sheriff from being guilty of and answering for the escape; for he ought to have sufficient force to keep him, seeing he may command the power of the county. *Cro. Jac.* 419.

On this writ, the sheriff may not break open any man's house to arrest him, but in all cases, when the door is open, he may enter to make execution of the body. But yet in favor of executions, which are the life of the law, and especially in cases of great necessity, or where the safety of the king and common-wealth are concerned, the general case is excepted, when the writ is at the suit of the king, then the sheriff or his officer, after request to have the door opened, and refusal, may break open the house to take the body. 5 *Co.* 91. 2 *Show.* 87. *pl.* 78. But he ought first to signify the cause of his coming, and request the owners to open the door. 5 *Co.* 91. *Cro. Eliz.* 908.

908. 4 *Leon.* 41. pl. 111. *Cra. Eliz.* 909. *Ibid.* 714. pl. 17.

But a man's house is no protection for another, therefore the sheriff may break open to take him. *Fof. Cr. L.* 319. House no protection for another.

It is said that the sheriff cannot receive the money on a *ca. sa.* as he can on a *fi. fa.* for on the command of the writ, he is to take the body, and bring it into court, that the plaintiff may be satisfied, so that the money is to be paid into court in order to discharge the body of the defendant, and not to the sheriff below. *Latch.* 177. It is said sheriff cannot receive the money on a *ca. sa.*

But payment to the plaintiff's attorney on record is a good payment to the plaintiff himself. 2 *Show.* 139. pl. 116.

In debt on a judgment the defendant pleaded that he was taken in execution by *ca. sa.* on that judgment, and had paid the money to the sheriff, and it was held to be no plea; because though he does pay it to the sheriff, yet the sheriff may be insolvent, or may die, and leave no assets, and then the party will be never the better. *Freem. Rep.* 842. and so it was held in *Baker's* case, who pleaded payment to the marshall, being in execution, and held to be no plea. See *Lutw.* 587. 12 *Mod.* 385. and in 12 *Mod.* 230. the sheriff hath no power to receive money of the defendant upon a *capias*, for his business is only to execute his writ. And if in such case the defendant pays the sheriff, and he afterwards becomes insolvent, and does not pay the plaintiff, such payment shall not excuse the defendant. *Per Holt. C. J.* Plea of payment to the sheriff, not good.

At common law no officer, whose office related to the administration of justice, could take any reward for doing his duty, but what he was to receive from the king. 10 *Mod.* 139. And the fundamental maxim of the common law is confirmed by stat. 3 *Ed.* 6. c. 26. whereby it is ordained, that, no sheriff shall take any reward to do his office, but shall be paid of that which he takes of the king, and that he who so doth, shall yield thrice At common law no reward was to be paid to sheriff for doing his duty.

And by stat. no sheriff is to take reward to do his office but of the king.

thrice as much, and shall be punished at the king's pleasure.

This was conducive to the honour of the king and welfare of the subject.

So much hath this law been thought to conduce to the honour of the king and welfare of the subject, that all prescriptions whatsoever, which have been contrary to it, have been holden void. 4 *Bacon Abr.* 463.

But sheriffs were backward in executing their writs therefore an act was made to state the fees.

The common law giving no fees to sheriffs, made them backward in executing writs, by reason of the great danger both in taking desperate men, by reason of resistance, and also in detaining them, for fear of escapes; so that they could have great rewards, or otherwise would do nothing; whereupon the parliament thought fit to fix their fees by stat. 29 *Eliz.* c. 4. *Latch.* 18. *Cro. Eliz.* 654. pl. 15.

Fees were often taken on a *capias ad satisfaciendum* for the whole penalty acknowledged.

By stat. 3 *Geo.* 1. c. 15. *sect.* 17. reciting, that whereas, it often happens that small sums only are remaining due upon judgments, statutes and recognizances, given, acknowledged, and entered into for great sums and penalties, and nevertheless in these cases upon executing of writs of *ca. sa.* the sheriff demands and takes for his fees, poundage for the whole money, for which said judgments, statutes or recognizances are entered or acknowledged. For remedy of which grievance and inconvenience, be it enacted, "that from and after the last day of *Michaelmas* term 1717. Poundage shall in no case be demanded or taken, upon executing any writ of *capias ad satisfaciendum*, or upon charging any person in execution by virtue of such writ, for any greater sum than the real debt *bona-fide* due, and claimed by the plaintiff amounteth unto, which sum "the plaintiff shall be, and is hereby obliged to mark and specify on the back of such writ, before the same be delivered to the sheriff to be executed." "And if any sheriff, &c. shall take greater fees, he is guilty of extortion, and being convicted shall forfeit to the party grieved, treble damages, and double the sum extorted, to be decreed by the court

To prevent which sheriffs are not to take more poundage than the sum indorsed on the writ.

Guilty of extortion.

And forfeit treble damages to party grieved.

" out

“ out of which such writ issued, in a summary way. And every person so offending, shall forfeit 200*l.* to be recovered by bill, plaint or information.”

As also 400*l.*

This statute extends to all judgments in *Westminster*, and that whether the sheriff executes them in a county or a franchise, he shall have his fees. And so it is of a bailiff of a liberty, when he executes any execution on a judgment given in the courts at *Westminster*, within his liberty. *Salk.* 331. But on process on a judgment given in a court of corporation, or liberty, it is otherwise. *Ibid.*

In term 1785. a special case was made by Lord *Mansfield* from the sittings at *Guildhall*, and the question was, whether a plaintiff should pay to the sheriff under the above act poundage for his debt, the prisoner being in gaol, and not having made satisfaction. It was held, that the sheriff was intitled to his poundage whether the plaintiff received the debt or not; and of course judgment for the plaintiff.

By this determination, it is clear that a sheriff has a right of action against the plaintiff on the taking and putting the defendant to gaol for the poundage on the sum levied.

Sheriff has a right of action for the poundage.

Whilst I was in office in *London*, this was never thought of, and the act of parliament is too strict on the plaintiff; for if his debt comes to a considerable sum, he must, before he can receive any money to reimburse himself, be liable to pay the sheriff his poundage, viz. 1*s.* for the first 100*l.* and 6*d.* for every other 100*l.* Upon a large sum this would be the ruin of him and his family; therefore the old way was most certainly best, which was, that the sheriff on discharging the prisoner, took no more than poundage on what the plaintiff received at the time of the defendant's discharge.

Observation.

The sheriff had the defendant in execution on a *ca. sa.* plaintiff delivered him on a *habeas corpus* to remove him to the king's bench prison. He upon

Sheriff had defendant in execution, *habeas corpus* was brought

L

this

to remove him ;
sheriff insisted on
his poundage, but
court said he
might bring his
action.

Under-sheriff re-
fused to execute
a *ca. sa.* before
payment of the
poundage, but
was obliged.

Sheriff cannot
apply the money
levied on a *ca.*
sa. to a *fi. sa.* he
has against the
plaintiff as exe-
cutor, at the suit
of the defendant
in the *ca. sa.*

this insisted, to be paid his poundage, before he parted with the body. *Cur.* said, they could not be making bargains with people to obey their process, which they could enforce an obedience to, and left the sheriff to his action for his fees, which was his legal remedy. *Str.* 1262.

An under-sheriff refused to execute a *ca. sa.* till he had his fees, *Cur.* said, plaintiff might bring an action against him for not doing his duty, or might pay him his fees, and then indict him for extortion. *Noy* 75. *Salk.* 331.

Bird was arrested at the suit of *Staple* on a *ca. sa.* *Bird* pays the money to the sheriff; at the return, the sheriff returned, that he took the defendant who paid into his hands 30*l.* 6*s.* 6*d.* the sum mentioned in the *ca. sa.* and after, and before the return, 11 *May*, a *fi. sa.* against the goods of *Staple*, the plaintiff in the *ca. sa.* ats. *Bird* executor, the defendant in the *ca. sa.* for 29*l.* 10*s.* was delivered to the sheriff, and that he levied the same out of the money received under the *ca. sa.* Upon this return and affidavit of facts, application was made to the court, and rule obtained to shew cause why he should not pay plaintiff's attorney the said 30*l.* 6*s.* 6*d.* deducting poundage, which rule was made absolute upon hearing counsel on both sides. *Staple v. Bird.* *Barnes* 214.

N. B. Had this *fi. sa.* been against *Bird* himself, I think the court would have applied the money, deducting poundage and the attorney's costs, towards a satisfaction of the *fi. sa.* *Vide* 3 *Wils.* 396. as to application of two judgments.

An action brought in the exchequer by the sheriffs of *London*, upon a bail bond taken by them in their own names, for the appearance of a defendant taken up upon an exchequer process, on the prosecution of the king's attorney general in behalf of the crown for custom-house penalties and forfeitures; and a *testatum capias ad satisfaciendum* to the sheriff of *Herts* against the bail, cannot be considered at the suit of the crown, though averred

to

to be for the benefit, and on the behalf, and at the expence of the crown: Nor shall the sheriff who executed it, be precluded from his poundage. *Lake v. Sheriff of Herts.* 4 Burr. 1981.

Fieri Facias.

THE next species of execution is against the goods and chattels of the defendant, and is called a writ of *fieri facias*; from the words in it, where the sheriff is commanded *quod fieri faciat de bonis*, that he cause to be made of the goods and chattels of the defendant, the sum or debt recovered.

This writ may be had against privileged persons, peers, &c. as other common persons, and against executors or administrators, with regard to the goods of the deceased. The sheriff may not break open any outer doors, 5 Rep. 92. to execute this writ, but must enter peaceably, and may then break open any inner door belonging to the defendant, in order to take the goods. Palm. 54. And he may sell the goods and chattels, (even an estate for years, which is a chattel real) 8 Rep. 171. of the defendant, till he has raised enough to satisfy the judgment and costs; first paying the landlord of the premises upon which the goods are found, the arrears of rent then due, not exceeding one year's rent in the whole. Stat. 8 Ann. c. 14. on notice being given.

This writ at the common law, bound the defendant's goods from the *teste* of the writ, so that any sale after that was void, because the goods from the time of the *teste* were attendant to answer the execution; for the execution at common law being only on the goods, if they had not allowed the goods to be bound, as if the party had transferred them, they thought every execution might be avoided by sale; and it was presumed,

Fieri facias.

This writ may be against privileged persons.

Sheriff must enter peaceably, not break open doors.

May sell goods, &c.

Paying landlord.

At common law, this writ bound the goods from the *teste*.

Abuse of this
notion.

To prevent
which, statute of
frauds was made,
and enacts, That
no writ of exe-
cution shall bind
the property.

This must be in-
tended as to
strangers, but as
to the party, the
goods are bound
from the *teste*.

If two writs of
fi. fa. bear *teste*
the same day,
bound to execute
the first.

Sheriff hath such
a property as he

that the sheriff should execute such writs immedi-
ately, and that there would be notice in the neigh-
bourhood, that they might not be deceived; but
the goods were not bound by the judgment; be-
cause the judgment was in force for a whole year;
and it would be hard, that none against whom
judgment was pronounced, should buy or sell
within that time; but men abused the notion of
the retrospect of the goods being bound by the *teste*
of the writ, to make sales uncertain; for they took
out writs one under the other, without delivering
them to the sheriff, by which they bound the goods
of their debtors, and consequently made their
sales, and commerce uncertain; to prevent which,
the statute of frauds and perjuries, binds the goods
only from the delivery of the writs to the sheriff,
enacting, "That no writ of execution shall bind
the property of the goods, but from the time of
its delivery to the sheriff, under-sheriff, or cor-
oners; who upon receipt thereof, (without fee)
shall indorse on the back thereof, the day of the
month, and year, when they received it."
29 Car. 2. c. 3. made perpetual, by 1 Jac. c. 17. s. 5.
which was no more than restoring the old law,
which supposed the writ to be delivered to the she-
riff immediately from the *teste*. *8 Co. 171. Cro.*
Jac. 451. Cro. Eliz. 174. Sid. 271.

This must be intended as to strangers, who might
have a title to the goods between the *teste* of the
writ, and delivery thereof to the sheriff; but as to
the party himself, his executors and administrators,
the goods since the statute, as before, are bound
from the *teste*. *2 Vent. 218. Comb. 33. 2 Show.*
485. 6 Mod. 225.

If two writs of *fi. fa.* bear *teste* the same day,
the sheriff at common law, and now since the sta-
tute, is bound to execute that which was first de-
livered to him. *Salk. 320. Carth. 419.* therefore
the time ought to be marked, when the sheriff re-
ceives those writs in office.

By virtue of this writ, the sheriff on the seizure
of

of the goods, hath such a property in them, that he can maintain trespass or trover; for he has the goods to sell, that he may have the money in court; and therefore, when he once seizes them, he has the property in them for that purpose. *Sid.* 438. *pl. 3. Vent.* 52, 53. *Mod.* 30. *pl. 75. 2 Saund.* 47. *Lev.* 282. *2 Vent.* 218. *Salk.* 222. *Vent.* 52. And if the defendant dies after the writ delivered to the sheriff, he may execute the same on the goods, in the hands of his executor or administrator of the deceased. *3 Wils.* 399. *Comb.* 33. *2 Lord Ray.* 808. 850. 1073. *12 Mod.* 130. 241. because the sheriff was intitled to seize them from the time of the writ.

If the sheriff seizes goods in his hands to the value of the debt, and pays part, and is discharged from the office without having sold the rest of the goods, or having returned his writ; that notwithstanding such discharge, and without any *venditioni exponas*, he may sell the goods remaining in his hands, and such sale and execution shall be good. *Roll. Abr.* 893. *Salk.* 323.

If he seizes goods to the value of the debt, and pays part, and is discharged, he may sell, without a *vend. exponas*.

By this writ, the sheriff is commanded to levy the debt of the goods, and chattels of the defendant, and he is therefore indemnified as far as he acts necessarily in order to the taking of the goods; and therefore, if he breaks open a chest, in which goods are locked up, or a barn, not adjoining to a dwelling-house, which is made for the conservation of goods only, he is indemnified by the writ; but, he is not by the writ authorized to break the dwelling-house, which is built for the protection of the man and his family. *Sid.* 189. *Keb.* 698. *2 Show.* 87. *Palm.* 54. If he gets into the house, the doors being open, there begins the execution, for the rest of the house is only for the protection of the goods; and therefore, he may enter and finish the execution of his writ: But, though the sheriff be a trespasser in the execution of the process, yet when the writ is served, and the money levied, the plaintiff shall have the benefit of it, and the party

This writ indemnifies the sheriff, and therefore he may break open a chest, &c.

but not the dwelling house.

But if he once gets into the house, there begins the execution.

If the sheriff be a trespasser, yet if the writ is served, and money levied, plaintiff shall have the benefit of it.

Protection of
house, not for a
stranger's goods.

Protection of a
man in his own
house, is agree-
able to the com-
mon law.

Sheriff's autho-
rity, and what
he may seize.

What he must
not seize.

is left to his remedy against the sheriff. *Brownl.* 50. 5 *Co.* 91. 3 *Inst.* 162. *Mod.* 668. *Yelv.* 28. *Cro. Eliz.* 908. *Dalt.* 350. But the protection of a man's house, as before hath been said, extends only to himself and family; for if a stranger, to elude the execution, receives the defendant's goods into his house, then the sheriff's authority shall reach them; because a design to elude the law, shall not be protected by the law; the sheriff might seize him in the stranger's house, because the defendant's leaving his own house, has waived the benefit of the law. 5 *Co.* 93. *Sid.* 186. The protection of a man in his own house, was very agreeable to the antient law; because, in personal contracts, they did only subject their chattels, and not their persons, nor freeholds; and, though afterwards, by subsequent laws, the freehold and person, were made liable to execution; yet, they have not taken away the privilege a man had by common law to defend his own house, which still continues, unless where the execution is by *habere facias seisinam*, or *possessionem*.

By this writ, the sheriff hath authority to seize every thing that is a chattel, *viz.* leases for years, be they of ever so long continuance. 4 *Co.* 74. but he cannot turn the lessees out of possession. 2 *Show. Rep.* 85. *fructus industriales*, fruits of industry, as corn growing, or sown on the ground, which goes to the executor; and if he sell the corn on the land, the party to whom the sale is made, shall have liberty of cutting and carrying it away, by virtue of such sale. 5 *Co.* 11. *Dalt.* 145. *Cro. Eliz.* 374. *Owen.* 70, 71. But furnaces annexed to the freehold, apples upon trees which belong to the freehold, and go to the heir, cannot be seized by the sheriff on this writ, because they are not *bona et catalla*, goods and chattels, and consequently, not within the authority of the writ; and at common law, could not be touched by an execution. *Cro. Jac.* 73. 4 *Co.* 74. *Dyer* 363.

It is a *quare*, Whether he may seize, and sell the
grafs

grafs growing, because grafs grows naturally out of the land without any tillage, but after it is cut down, there can be no doubt.

The whole estate personal, is liable to be sold under a *fi. fa.* except wearing apparel; and it hath been held, that if the party hath two gowns, the sheriff may sell one of them. 3 Co. 12. Comb. 356. Personal estate liable.

And the sheriff may take moveable goods, as cattle, corn in the barn, &c. household stuff, money, plate, apparel, &c. 3 Co. 12. Co. Litt. 390. b. Dalt. 145. Sheriff may take moveables.

Goods pawned, shall not be taken for the debt of him who pawned them, during the time they are pawned. Kitchen 226. Nor goods demised, or letten for years, nor goods distrained, nor before seized on an execution. Bro. Pledges 28. Cro. Car. 149. 1 Roll. 893. 1 Show. 174. unless such first execution were by fraud. Farres. 37, 38. Goods pawned.

If a soap boiler, or other trader, being an under-tenant, for the convenience of his trade, puts up fats, coppers, tables, partitions, and paves the back-side, &c. the sheriff may take them on a *fi. fa.* in the like manner, as the lessee might have removed them during the term. Salk. 368. otherwise, where such trader makes hearths and chimney pieces to compleat the house, and not for the conveniency of his trade. If a soap boiler, &c. being an under-tenant, puts up fats, &c.

If on an execution against one of two partners, the partnership goods are taken and sold, the sheriff may seize and sell all, and he is to pay over to the other a share of the produce proportioned to his share of the partnership effects. Eddie v. Davison, Dougl. 627. If execution against partners.

In Salk. 392. it is said, that he must seize the whole, and sell a moiety thereof undivided, for that the vendee will be tenant in common with the other partner. 1 Show. 173. Comb. 217. Must seize the whole, and sell a moiety.

A person had an annuity for 21 years, granted by 2. Eliz. payable by her receiver of her court of wards, which on a *fi. fa.* was extended and An annuity for years may be taken.

fold, and held good, for being an annuity for years, and payable by the receiver, it is in nature of a rent charge for 21 years, and is grantable over and vendible, and not like an annuity which chargeth the person only. *Cro. Jac. 7. York v. Fuirne.*

Goods ecclesiastical not to be taken.

The goods ecclesiastical of clergymen, are not to be taken by the sheriff, but by the bishop. *2 Inst. 472.*

Sheriff may sell a term for years, but if he mistakes in the recital of the term, no sale.

The sheriff by this authority, has a right (as before said) to sell a term for years; but if he mistakes in reciting the commencement and end of the term, this is no sale; because a term ought to have a certain beginning, and a certain end; and if he mistakes the commencement or the end of the term, he does not sell the same term that was vested in the defendant, and therefore the sale is void. *4 Co. 74.*

But if he sells with the general words, "All," &c. good.

But, if he sells it with the general words, "All title, estate, right and interest of the defendant," the sale is good, though there be a mistake in the reciting of the commencement or end of such lease; for the sheriff hath the same authority to sell the defendant's goods, in order to execute the judgment, and pay the defendant's debts, as the defendant had over his own property; and therefore, as such general words would have passed his chattels from the defendant, so it shall in case of the sheriff, who is to satisfy the defendant's debt. *Ibid.*

If a sheriff reciting, that the defendant hath a term for years, sells it by virtue of *a. fi. fa.* the sale is good, for it cannot be intended, that the sheriff should certainly know the beginning and end of the term. *Cro. Eliz. 584. 4 Co. 74. Palmer's case.*

May sell an estate pur autre vie.

It is said, that a sheriff on a *fi. fa.* or *levari facias*, cannot sell an estate for life, which being a freehold, can be no more affected by these writs, than any estate of inheritance. *3 Co. 13.* But it is said, since the statute 29 *Car. 2.* an estate *pur autre*

outre vie, may be sold by the sheriff on a *fi. fa.*
Comb. 391.

If a man recovers damages against a corporation, he shall not have execution of the goods of the singular men in their natural capacity, but of the goods of the corporation. 8 H. 6. 1. 19 H. 6. 64. 26 H. 6. execution 128. So, if a corporation be fined, shall be levied of the goods of the corporation. 9 H. 6. 36. b.

Corporation
 goods may be
 taken.

The property of the goods is vested by the delivery of the *fi. fa.* and an extent afterwards for the king comes too late, and that on the statute of frauds. *Comb.* 123. For when a judgment is once executed, the goods are in *custodia legis*, and neither executioner process, or assignment from commissioners of bankrupts, will touch them. 3 Mod. 236. *Letchmere v. Throwgood.*

If there is a levy
 made, and an ex-
 tent afterwards,
 comes too late.

The sheriff is bound at his peril, to take only the goods of the defendant, for if he take goods of a stranger, he is liable to an action in trover or trespass. *Keb.* 693. Therefore, if he doubts, whether the goods shewn him are the defendant's, he may summon a jury, *de bene esse*, to satisfy himself, whether the goods belong to the defendant or not; this will justify him in returning, that the defendant has no goods within his bailiwick, and mitigates damages in an action of trespass, if the goods seized should not happen to be the defendant's. *Dalt.* 146. *Dougl. Rep.* 40.

Bound at peril to
 take goods of the
 defendant.

If a sum is to be levied on a corporation, it may be levied upon the mayor or chief magistrate, or upon any person being a member. *Str.* 367.

Sum levied on a
 corporation.

The sheriff may return on this writ, that the goods remained in his hands *for want of buyers*, and this return is good, because the sheriff is directed to levy the money from the goods, which implies an authority to sell them; yet, he may not be able to find buyers; and therefore, such return is to be allowed. *Yelv.* 44. *Sid.* 438. 2 *Saund.* 47. *Mod.* 751. *Vent.* 52. but after this return, a *venditioni*

The sheriff may
 return levied, and
 the goods remain
 in his hands, for
 want of buyers.

After such return

a venditioni exponas issues.

ditioni exponas may issue; to give the sheriff further power to sell after the first writ is returned, and to oblige him so to do; for, though he may sell after the return, since by the seizure he had the property of the goods in order for sale; yet, he is not obliged to sell without this writ, and therefore it issues out, in order to bring the money into court. *Cow. Rep.* 406.

Old sheriff shall be distrained.

The old sheriff may sell by virtue of the *fi. fa.* after he is out of office, without a *venditioni exponas*. *Saund.* 164, 165. for by the seizure, he is answerable for the value of the goods to the parties; though, if he returns, that they be upon his hands for want of buyers, this is a good return; but if he does not sell them, there shall issue a *distringas* to the new sheriff, to distrain the old one, till he sells them, and pays him the money over, which he is to have in court. *Cro. Jac.* 514, 515. but no *venditioni exponas*, goes to the old sheriff, because he ceases to be an officer of the court. *Godb.* 276.

The sheriff cannot detain goods in his own hands, and satisfy the debt, but he ought to sell.

The sheriff cannot detain the goods on an execution in his own hands, and satisfy the debt of his proper money; but he ought to sell them upon a *venditioni exponas*, and may return on his so doing, that they remain in his hands for want of buyers. For the law requires of sheriffs, a strict execution and observance of the writs directed to them. *Noy* 107. *Lutw.* 589. *Langdon v. Wallis*. Neither ought the goods to be delivered to the defendant, but ought to be sold. *2 Vent.* 95.

Goods ought not to be delivered to the defendant.

By seizure, the property of the goods is altered; therefore, if error be brought, and a *superfedeas* issues, it does not hinder sale.

When the sheriff has by virtue of the *fi. fa.* seized any goods, the property of the goods is altered by the authority of the law; and therefore, if a writ of error be brought, and a *superfedeas* issues, it does not hinder the sheriff from proceeding to sell on such execution, and he may do it after such *superfedeas*, which is no more than a restraint from proceeding on that writ, if he has not already proceeded upon it, and is not a writ of restitution to restore the goods, if he has already altered

tered the property; and therefore, if the property is altered, he is at liberty to proceed according to the command of the first writ, since the property was altered by such writ before the *superfedeas*; but if the *superfedeas* had issued *quia improvide, because irregularly*; then the defendant should have been restored to the goods, for such *superfedeas* is in the nature of a restitution, for it sets aside the *feri facias*, because it issued irregularly: If the sheriff has seized goods on the *fi. fa.* though the plaintiff in error has a *superfedeas* afterwards, by which the sheriff is ordered to stop further execution; yet the property of the goods being altered by the seizure, the sheriff may sell them, and if he does not, the court will award a *venditioni exponas* even though the original record be removed; for upon filing the *feri facias*, there is a record in court sufficient to ground further process upon. *Gilb. Execut. 23.*

If the sheriff returns that he has goods to the value of 72*l.* which remain in his hands for want of buyers, it is no estoppel, but that he may sell them for less; for it appearing on the return, that they are not sold, but that they remain in specie in his hands, the value cannot be so set, but that it may be altered between that and the sale, therefore, if on the *venditioni exponas* it appears, that he has sold those goods for less, the plaintiff may have a new execution for his debt. *Cro. Eliz. 598. Cro. Jac. 515. Godb. 276.*

Yet if the sheriff values them so high, as none will buy them at that rate, he must himself. *2 Show. 87. The King v. Bud.*

It is said, on a *fi. fa.* there need no appraisement, but on an *elgit* there must. *2 Vent. 95. Beeley v. Sampson.*

If *fi. fa.* be awarded to the sheriff to levy 20*l.* and he sells to the value of 40*l.* and returns the *fi. fa.* with the 20*l.* in court, he may detain the surplusage until demand made of it: for he is not bound

But if *superfedeas* issued irregular, then defendant to be restored.

If the sheriff has seized, though plaintiff in error has a *superfedeas*, yet the property being altered, sheriff may sell.

If sheriff returns, that he has goods to the value of 72*l.* which remain &c. he may sell them for less.

Yet if he values them so high as none will buy.

No app. on *fi. fa.*

If sheriff levies 20*l.* of goods and sells for 40*l.*

bound to search out the defendant. *Noy. 69.* He ought not to take more than will satisfy. *Ibid.*

But if he returns taken cattle to the value of 100*l.* and they die for want, plaintiff shall have the value.

But if the sheriff returns that he has taken cattle to the value of 100*l.* and they die afterwards for want of meat, the plaintiff shall have the value from the sheriff, because by the sheriff's own default, it is become impossible, that it should be reduced to any other certainty, than what is mentioned on the return. *Cro. Jac. 515. Godb. 276. Hob. 205. 206. Danv. Abr. 79.*

If he levies tho' no return, he is liable to an action,

If the sheriff levies the money upon a *fi. fa.* though he makes no return upon the writ, yet an action of *debt, account or assumpsit* lies against him and his executors; because it is a debt in the sheriff by the levying the money, and the defendant by the sheriff's levying the money upon him, can on a *scire facias* to have execution, plead this in bar, or upon a second *feri facias*, relieve himself by an *audita querela*: for the lien of the judgment is discharged, by the sheriffs executing the writ, and if the plaintiff had not this action against the sheriff, he would be remediless. *Sir W. Jones, 430. Rol. Abr. 598. 921.*

May return nulla bona and that the defendant is a beneficed clerk.

The sheriff to this writ may return *nulla bona, and that the defendant is a beneficed clerk, having no lay fee, and that he is rector or vicar of the parish church of B.* *Offic. Brev. 97. Dalt. 219. Sid. 276.*

Where seizure is returned, *sci. fa.* lies against the sheriff.

Wherever the sheriff returns a seizure of the goods, a *sci. fa.* lies against him, and so if he returns a rescue, because by that return he charges himself with the seizure, for it appears that the sheriff has levied the goods of the defendant; so that the judgment is no lien upon the defendant's goods. *Godb. 276.*

If defendant pays the sheriff before entry, he cannot enter afterwards.

If the sheriff have a *fi. fa.* against a man's goods, and before execution, he pay him the money, in this case he cannot do execution after, and if he do, trespass lies. Nor can he deliver them to the plaintiff in satisfaction of the debt, but he must return to the court, the execution of his writ. *Cro. Eliz. 504. Noy 56. Dalt. 529.*

If

If the defendant tenders the debt, it's a wrong for the sheriff to sell the goods. 1 *Keb.* 655.

If the sheriff levy the money, and give it to the plaintiff, though he never made any return to the court, it is good enough, 4 *Rep.* 64. for the end of the execution is answered.

If a *fi. fa.* is fraudulently or insufficiently executed, and no person left in possession, and another plaintiff gets his execution executed afterwards; this second shall stand good, and the sheriff may return *nulla bona* on the first. *Bidley v. Wyndham*, 1 *Wils.* 44.

Payment to the sheriff on a *fi. fa.* is a good plea, because he hath authority to levy the debt. 2 *Lev.* 203. *Taylor v. Bekon*, 2 *Jon.* 97. *Skin.* 665. 5 *Mod.* 296.

Sheriff on a *fi. fa.* levied the debt; the defendant brought a bill in chancery, and got an injunction to stay the money in the sheriff's hands. The plaintiff and his attorney (both prisoners in the *Fleet*) move the court against the sheriff to return the writ, the sheriff prayed the direction of the court; for if he return the writ, he must pay the money, and then he shall be committed by the chancery for breach of injunction, and if not, then the *K. B.* will amerce him. The court took no notice, but ordered a return, or they would commit him, nor would they any way assist him. 8 *Mod.* 315. *Wilson v. Aldridge*.

When a sheriff takes goods in execution, he may sell them at any rate, if defendant refuses to pay the debt, *Vent.* 7. and they may be sold to the plaintiff, though not actually delivered to him, *Comb.* 452. But he is to sell them for ready money, because he is immediately charged to the party for whom the sale was, 6 *Mod.* 83. *Morley v. Staker*.

This writ does not abate by the plaintiff's death but the sheriff must go on to execute his writ *Mod. Cas. Law and Eq.* 225. *Salk.* 322. 6 *Mod.* 290.

Landlord.

If a tender is made of the debt.

If sheriff levy and give the money to the plaintiff.

If a *fi. fa.* is fraudulently executed, a 2d. *fi. fa.* shall take place.

Payment on a *fi. fa.* a good plea.

If sheriff receives an injunction he must return the writ.

If he takes goods may sell at any rate, and may sell tho' not deliver to the plaintiff for ready money.

Does not abate by death.

Landlord.

No goods, &c. shall be taken in execution, unless the party before removal thereof, pay the landlord the rent due.

Proviso not to hinder the queen to levy any debts due to the crown or fines.

Executors and administrators within the act.

BY stat. 8 *Ann. c. 14. s. 1.* It is enacted, "that no goods upon any tenements leased shall be taken by any execution, unless the party at whose suit the execution is sued out, shall, before the removal of such goods, pay to the landlord of the premises, or his bailiff, all money due for rent for the premises, provided the arrears do not amount to more than one years rent; and in case the arrears shall exceed one year's rent, then the party at whose suit, &c. paying the landlord or his bailiff, one year's rent, may proceed to execute his judgment; and the sheriff is required to levy and pay to the plaintiff, as well the money paid for rent, as the execution money.

"Provided that nothing in the act contained, shall extend or be construed to extend, to let, hinder, or prejudice, her majesty, her heirs, &c. but that it shall and may be lawful for her majesty &c. to levy, recover, and seize such debts, fines, penalties, and forfeitures, in the same manner, as if the act had never been made." *s. 8.*

It has been determined that the executor of a landlord, should have the benefit of this act, as well as the landlord himself, for it is an interest vested. *Fortesc. Rep. 359. 360. Str. 214.* So also an administrator. *Str. 212.* But where goods were taken, and the money levied before administration taken out, it was held, that as the execution was executed, he came too late, *Str. 97. 214. Fortesc. Rep. 460.* This means that the goods were actually sold. But *Powis Justice seemed to be of opinion to the contrary*, who held, that the administration should have relation to the death of the intestate; because by the ecclesiastical law it is not to be granted within 14 days of an intestate's death; which the other justices denied and said, that relations being fictitious ought not to hold place against

against the right of strangers. *Gilb. Eq. Rep.*

223, 224.

The landlord's rent must be paid without deduction of poundage or expences. *Str.* 643.

A ground landlord of an house, in which an under lessee dwelt, and against whom an execution was sued, is not within the statute, which extends only to the immediate landlord. 2 *Str.* 787.

As the landlord is intitled to one year's rent, he therefore is bound to give notice to the sheriff of its being due, for the sheriff is not bound to retain without, nor to know who the landlord is, or what rent in arrear without such notice, and an action will not be without such notice. 1 *Str.* 97.

After the landlord had a years rent paid out of the execution money according to the statute, there came another execution, and another year's rent demanded, held, that the intent of the act was, to continue a lien as to one year, and to punish him for his laches, if he let more run in arrear. 2 *Str.* 1024. and 219.

When land is let for a year, and afterwards at will for less rent than before, and both rents are payable half yearly, and at the end of the first half year under the last demise, an execution comes, the landlord is intitled only to the two last half years. *Andr.* 218.

When the land is let for a year, and then part thereof at will, and an execution comes, the landlord is not intitled to any part of the first year's rent, *Ibid.* 218, 219.

If an extent comes in, the landlord cannot claim his rent, although distress taken the day before. *Bunb.* 269. pl. 345. So on extent or an outlawry, although he had distrained 3 days previous to the entry and motion to be paid under stat. 8 *Ann.* denied. *Bunb.* 5. pl. 5. If a distress be taken 29 *October*, and an extent dated 4 *November*, and corn, &c. seized, the landlord cannot have his rent, for no property was de vested by the distress, and they were in the landlord's hands by way of pledge. *Bunb.* 42. *Vent.* 37. 2 *Saund.* 47. but an attach-

ment

Must be paid without deduction.

A ground landlord not within the act.

Landlord must give notice to the sheriff of rent due.

When there are two executions, landlord cannot have a year's rent on each.

When land is let for a year, and afterwards at will, and both payable, intitled only to the 2 last half years.

When land is let for a year, and part at will.

Landlord not intitled to rent on an extent, altho' he distrain previous to the entry, for no property is altered.

ment was refused, although a contempt to oppose the extent.

An immediate extent prevails against the landlord's distress, tho' taken before extent entered.

An immediate extent against the king's debtor, tested after a distress for rent justly due to the landlord, with notice to the tenant being the king's debtor, and appraisement of the goods and chattels, but before sale, shall prevail against the distress. *The King against Cotton, Esq. Parker's Rep. 112.*

In what Cases after Sale, Restitution shall be.

No remedy for sale under value, unless, &c.

NO remedy lies against the sheriff for the sale under value, unless it be by covin. *Keilw. 64. pl. 2.*

If sheriff sells a term, and judgment reversed, party to have the money.

If the sheriff sells the term by virtue of a *fi. fa.* and the judgment is reversed by writ of error, the defendant shall not be restored to the thing in specie, but in money for which it is sold; for the *fi. fa.* gave the sheriff authority to levy the money *de bonis*, of the goods, so that he was obliged to turn the goods of the defendant into money, and therefore, the restitution must be of what the execution had taken from him, which was money; and not of the term itself, for then nobody would buy; and, therefore a stranger's interest, which comes to the term by due course of law, cannot be affected by reversion of a judgment between the parties to which he is in no wise privy, provided the sale be without fraud. *Mod. 573. pl. 788.*

If sold for 100l. and worth 1000l. shall have the 100l. only.

Sale of a term upon an execution by a sheriff for 100l. to a stranger, though it was worth 1000l. yet upon reversal he shall not have the term again, but the 100l. only. *Yelv. 180. Goodyer v. Junco, Cro. Jac. 246. 2 Vern. 314, 315. pl. 302. Peyton v. Ayliffe. Vide 3 Chan. Rep. 32. Gascoigne v. Stve*, where a bill was brought to vacate a judgment where a lease was extended and sold by the sheriff to one *Parker*, in trust for the defendant,

Where an account was ordered, and a reconveyance.

the

the conusee of the judgment, and to have the bill of sale set aside, an account of the profits and writ of restitution of the possession, the lease being of greater value than extended at. And upon hearing, a decree was made to account and reconvey.

It is usual for the sheriff to make a bill of sale to the plaintiff's friend, for the amount of the appraisement; but he cannot compel the sheriff so to do, though he makes a promise: *Cowp. Rep.* 403.

Usual to make a bill of sale.

Levari facias.

A Third species of execution is by writ of *levari facias*; which affects a man's goods and the profits of his lands, by commanding the sheriff to levy the plaintiff's debt on the lands and goods of the defendant, whereby the sheriff may seize all his goods, and receive the rents and profits of his land, 'till satisfaction be made to the plaintiff. It is said, that the sheriff may not only sell the goods, but also collect the debts out of the profits of the land, as corn or grass growing thereon, yet, in neither case, hath he authority to meddle with the debtor's lands, so as to sell or deliver such lands, to the creditor, in satisfaction of his debt. 3 *Co.* 11. *Co. Litt.* 290. b. 2 *Inst.* 450. *Plowd.* 441. *Comb.* 470. Little use is now made of this writ; the remedy by *elegit* which takes possession of the lands themselves, being much more effectual. It was the most ancient judicial process of the law, though it now continues only in three cases, in the county and manor court, recognizances in chancery, and a recovery against the heir on the lands of his ancestor by descent. *Bract.* 440. *F. N. B.* 265, 266. *Reg.* 300.

Levari facias affects a man's goods and profits of the land.

May not only sell the goods, but collect all the debts out of the profits of the land as corn and grass growing, &c.

Little use is now made of this writ.

The most antient in the law.

This is now used, where the sheriff on a *fi. fa.* returns that an ecclesiastic is a beneficed clerk, not having any lay fee. On this return this writ of *levari* or *fieri facias*, goes to the bishop of a diocese,

Now used where sheriff returns a beneficed clerk.

M

cese,

cese, to levy the debt and damages, which are not to be touched by lay hands; and thereupon the bishop sends out a sequestration of the profits of the clerk's benefice, directed to the church warden, to collect the same, and pay them to the plaintiff, till the sum be raised. 2 Burn. Eccl. Law 339.

It issues out of the exchequer to levy debts due to the king.

This writ also issues out of the exchequer, to levy debts due to his majesty, and the goods seized, as well as the lands, are to be appraised, and delivered over to the party, according to the appraisement. See stat. 3 Geo. 1. c. 15. s. 3. for poundage.

The beasts of a stranger, *levant* and *couchant* may be taken after outlawry.

It is said upon a *levari facias* to levy the yearly value of 55 l. found by inquisition on an outlawry upon a judgment in debt, the beasts of a stranger *levant & couchant* on the land may be taken, for they are the issues of the land, 1 Salk. 395, and were it otherwise, it would be in the power of the party, by agisting his lands, to defeat the king of the benefit of the outlawry. 1 Salk. 395. 5 Mod. 112. Carth. 441. Skin. 617. Comb. 434, 469. But not on a *fi. fa.* for the Queen's debt. Cro. Eliz. 431. 1 Rol. Abrid. 159. Hard. 101.

Though one be in execution for the king, yet a *levari facias* lies *de bonis & catallis* and by such writ, the sheriff may take ready money. 2 Show. 166.

Elegit.

Elegit.

THE fourth species of execution is by an *elegit*; which is a judicial writ, given by the statute 13 Ed. 1. c. 18. either upon a judgment for a debt, or damages; or upon the forfeiture of a recognizance, taken in the king's courts. By the common law, a man could only have satisfaction of goods, chattels, and the present profits of lands, by the two last mentioned writs of *feri facias*, or *levari facias*; but not the possession of the

By the common law a man could have only satisfaction of goods, &c. and not possession of the land.

lands

lands themselves; which was a natural consequence of the feudal principles, which prohibited the alienation, and of course the incumbering of the fief with the debts of the owner. And when the restriction of the alienation began to wear away, the consequence still continued; and no creditor could take the possession of lands, but only levy the growing profits: so that, if the defendant aliened his lands, the plaintiff was ousted of his remedy. The statute granted this writ (called an *elegit*) because it is in the *choice* or *election* of the plaintiff, whether he will sue out this writ, or one of the former) by which the defendant's goods and chattels are not sold, but only appraised; and all of them (*except oxen and beasts of the plough*) are delivered to the plaintiff, at such reasonable appraisement and price, in part of satisfaction of his debt. If the goods are not sufficient, then the moiety or one half of his freehold lands, which he had at the time of the judgment given; 2 *Inst.* 395. whether held in his own name or by any other in trust for him, are also to be delivered to the plaintiff; to hold out of the rents and profits thereof, the debt to be levied, or till the defendant's interest be expired: as till the death of the defendant, if he be tenant for life, or in tail. Copyhold lands, are not liable to be taken in execution upon a judgment. 1 *Rol. Abrid.* 888. But in case of a debt to the king, it appears by *Magna Charta* c. 8. that it was allowed by the common law, for him to take possession of the lands, 'till the debt was paid. For he, being the *grand superior* and *ultimate proprietor* of all landed estates, might seize the lands into his own hands, if any thing was owing from the vassal; and could not be said to be defrauded of his services, when the ouster of the vassal proceeded from his own command. This execution, or seizing of lands by *elegit*, is of so high a nature, that after it, the body of the defendant cannot be taken: but if execution can only be had of the goods, because

The statute granted this writ,

If goods not sufficient then a moiety of the land.

Until this statute lands were not liable to debts, nor are copyhold lands now liable, unless a debt due to the king.

Because he is the grand superior lord of all estates.

After *elegit* cannot take the body, if there are lands extended.

M

there

If no land then
a ca. fa. may be
had.

Body and goods
may be taken,
but not body and
land too.

He that recovers
a debt, may have
a fi. fa. or elegit.

Sheriff may take
in execution, and
deliver one moi-
ety of all lands.

Two things to be
observed.

Must be done by
Inquest.

Terms for years,
and interest out

there are no lands, and such goods are not sufficient to pay the debt, a *capias ad satisfaciendum*, may then be had after the *elegit*; for such *elegit* is in this case, no more in effect, than a *fieri facias*. *Hob.* 58. So that body and goods may be taken in execution, or land and goods; but not body and land too, upon any judgment between subject and subject, in the course of the common law. The election cannot be complete, unless the plaintiff has some benefit from the land. 1 *Str.* 226.

The statute ordains, "that where a debt is recovered or acknowledged in the king's court, or damages awarded, it shall be in the election of him that sueth to have a *fieri facias* unto the sheriff to levy the debt upon the lands and chattels of the debtor, or that the sheriff shall deliver to him all the chattels of the debtor (saving his oxen and beasts of his plough) and the one half of the land, until the debt be levied upon a reasonable extent; and if he be put out of the land, he shall recover it again by writ of *novel seisin*, and after that by writ of *re-disseisin*, if need be." 13 *Ed.* 1. c. 18.

By force of this writ, the sheriff may take in execution and deliver unto the party plaintiff, the one half of all the lands, tenements and rents of the debtor, at a reasonable extent, and all his goods and chattels (*except his oxen and beasts of his plough*) until the debt be levied upon a reasonable price or extent 3 *Co.* 12. (a.)

By this writ two things are to be done:

1st. *The goods and chattels of the defendant, are delivered to the plaintiff.*

2^d. *The moiety of the lands and tenements.*

And this must be done by inquest taken by the sheriff; for the valuation of the goods and lands ought to be first found by the inquisition of a jury, and the goods and chattels are delivered by reasonable price, as the lands are by reasonable extent; but terms for years which are chattels real, and an interest out of lands and tenements,

may

may be delivered as chattel by reasonable price, or as profit out of lands, by reasonable extent, and hence, if a term for years be extended and valued, at a certain value in gross, and delivered, and the debt is more than levied out of the profits of other lands, and of the term, yet he shall not account for the profits of the term, nor deliver up the same, because he had it at a stated price by the *elegit*, and the lands and tenements, were only for the remainder of the debt, and therefore the profit of them will only go towards satisfying such remainder; and for these last profits only, the plaintiff shall be answerable; *Cro. Eliz.* 584. *Hob.* 58. therefore some of the books say, that a chattel or term for years may be sold, which is true in one sense, *viz.* that they may be sold to the plaintiff, for the price settled by the jury, and if the defendant tenders the money to the sheriff before delivery, or to the court before the actual delivery by the sheriff, such goods are saved; and if afterwards delivered, he shall be intitled to his *audita querela*. *Moor* 873. *pl.* 1216. but if there is no tender made, the property of the goods are altered by the delivery of the sheriff, and the plaintiff may dispose of them under the judgment.

The *elegit* as to goods, is not a *feri facias*, for a *fi. fa.* is executed by sale, but the *elegit* by appraisement of the jury and delivered to the party. *1 Sid.* 104. *1 Lev.* 92. *1 Keb.* 105. And the sheriff and jury may go to the house or ground to be extended, or where the goods are, and there appraise and value the same. *5 Co.* 91. They may go into the same house or ground for that purpose, if the doors or gates be open, but may not break open the gates or doors. *Dalt.* 134.

The extent and valuation of the lands, and the appraising of the goods, must be by an inquest by the oath of 12 honest and lawful men, and not by the sheriff himself. *4 Co.* 74. *2 Bulstr.* 97. *4 Rep.* 65. (a.) And a bailiff of a liberty, may execute them, within the equity of the statute;

M 3

that

of lands, may be delivered as a chattel by reasonable price.

Some of the books say, a chattel or term for years may be sold,

The *elegit* as to goods not a *fi. fa.*

Sheriff and jury may go to the house, &c. and value.

Extent and valuation must be by 12 men.

Bailiff of a liberty may execute this writ.

that is, such a bailiff as has the execution and return of writs. *Cro. Car.* 319. and he may deliver the moieties.

Sheriff is to impanel a jury to enquire of the goods, and also lands.

Cannot be done without inquest.

If goods sufficient, ought not to extend lands.

When the jury have found the seisin, a moiety to be delivered.

Not bound to deliver a moiety of a particular tenement, and farm.

What inquisition ought to find.

Deliver moiety with certainty.

Upon an *elegit* the sheriff is to impanel a jury, who are to make inquiry of all the goods and chattels of the debtor, and to appraise the same; and also to inquire as to his lands and tenements; and upon such inquisition the sheriff is to deliver all the goods and chattels (*except oxen and beasts of the plough*) and a moiety of the lands, to the party, and return his writ, in order to record his inquisition in that court, out of which the *elegit* issued. For it cannot be done by the sheriff without an inquest, because the words of the statute are by *reasonable price and extent*, which must be found such, by the oaths of 12 men. *2 Inst.* 396. *Co. Lit.* 389. *Dyer* 100. *5 Co.* 74.

Although the creditor takes out an *elegit*, yet if it appears to the sheriff, that there are goods and chattels sufficient of the debtor's, to satisfy the debt, he ought not to extend the lands. *3 Inst.* 395.

When the jury have found the seisin, and value of the land, the sheriff and not the jury, is to set out and deliver a moiety thereof to the plaintiff by *metes and bounds*. *Ibid.* But the jury need not divide it. *Cro. Car.* 319.

The sheriff is not bound to deliver a moiety of particular tenement and farm, but only certain tenements making in value a moiety of the whole. *Salk.* 563. *1 Sid.* 91. *Cro. Car.* 319. It is agreed, that the moiety extended must be set out by *metes and bounds*. *Den v. Earl of Abingdon.* *Dougl.* 473.

The inquisition ought to find the lands with *certainty*, and ought to shew the *place* and *county*, where the inquisition is taken, and where the lands lie. *Dyer* 208. *b.* If no lands are returned, the sheriff need not return an inquisition. *Str.* 874. The sheriff on the inquisition shall deliver the moiety,

ety, described with certainty. 1 *Vent.* 259. described by *metes and bounds.* *Hult.* 16. distinctly.

1 *Brownl.* 38. He ought to deliver a moiety only; Moiety only to be delivered.

for if he delivers more, it will be void for the whole. 1 *Sid.* 91. 239. And if the defendant Joint-tenant,

be joint tenant, or tenant in common, it ought to be specially mentioned in the return. *Hut.* 16.

Brownl. 38. If there are divers conuzors, a moiety of the lands of all. 2 *Inst.* 396. If divers conuzors.

If the defendant has aliened after judgment, a moiety of the land in the hands of the purchaser, as well as of the defendant. *Ibid.* If land aliened after the judgment.

If the lands lie in several *vills*, a moiety of the land in all, and not the whole in one *vill.* 1 *Lev.* 160. If lands lie in several vills.

The sheriff is to deliver one half of all houses, lands, meadows, and pastures, rents, reversions and hereditaments wherein the defendant had any sole estate in fee, or for life, into whose hands the same do afterwards come; but not of a right only to land, an annuity, copyhold lands, &c. *Dyer* 206. 7 *Rep.* 49. *Plowd.* 224. Stat. 13 *Ed.* 1. c. 18. To deliver one half of all houses, lands, &c.

On inquisition of a lease, which is but a chattel, the sheriff may sell it as goods, but if he extends it, there shall be no other benefit than as of a common extent. 1 *Brownl.* 38. Sale or extent of a lease.

Actual possession cannot be delivered on an *elegit*, for the sheriff ought only to deliver seisure, to enable the plaintiff to maintain an ejectment, and the tenant may plead thereto, otherwise the tenant would be turned out unheard and be remediless. 3 *Keb.* 243. Actual possession cannot be delivered.

A term for years; 2 *Inst.* 396. Lands which defendant has by extent, upon a statute merchant, &c. 1 *Roll.* 887. l. 12. 3 *Lev.* 113. *Mod.* 36. So all tenements, as well as land of the defendant, as a rent, &c. *Bro. Elegit.* 13. *Mod.* 32. So two thirds of a rent may be extended, though the defendant has the whole. *Cro. Eliz.* 742. Lands before in execution upon a statute. 4 *Co.* 65. b. So now by stat. 25 *Car.* 2. c. 3. s. 10. "It shall What estates are extendable.

Incumbrances of
cestui que trust.

“ be lawful for every sheriff or other officer, to
“ whom any writ or precept shall be directed, up-
“ on any judgment, statute, or recognizance, to
“ do execution of all such land, tithes and here-
“ ditaments, as any other persons be seized or pos-
“ sessed in trust for him against whom execution is
“ sued; as if the party against whom execution
“ shall be sued, had been seized of such lands, &c.
“ of such estate as they be seized of in trust for
“ him at the time of the execution sued, which
“ lands, &c. shall be accordingly held, freed from
“ all incumbrances of such persons seized or pos-
“ sessed in trust.”

What cannot be
extended.

But upon an *elegit*, the sheriff cannot extend a copyhold. 1 *Roll.* 888. l. 1. Nor a term for years of a copyhold made by the licence of the lord. *Ibid.* l. 3. Nor lands of which the defendant is disseized, whilst they are in possession of the disseizor. *Ibid.* l. 7. Nor since the statute 29 *Car.* 2. lands which the trustee has aliened before execution: for they are not bound by the judgment. *Comyn.* 227. Nor the land of a villein upon an *elegit* against the lord; for, it is the land of the villein, till the lord seizes it. *Ibid.* l. 20. Nor a tenement which cannot be granted over; as the office of philazer; for it is an office of trust. *Dy.* 7. 6. So a bare rent seck cannot be extended, *Cro. Eliz.* 66. nor does it lie of the glebe land of a parson or vicar, no more than of a church-yard, *est solum Deo consecratum.* *Jenk.* 207.

An *elegit* against
an heir, does not
lie during his
minority, nor
against wife en-
dowed.

Entailed lands in
the hands of the
heir.

Priority of judg-
ments.

An *elegit* against an heir, does not lie during his minority, though he be charged as terre-tenant. *Co. Litt.* 290. a. Nor against the wife of the defendant, endowed by the defendant within age. *Ibid.*

Entailed lands in the hands of the heir, are not extendible, neither by *statute*, nor *elegit*. *Cro. Jac.* 85.

A. had judgment against *J. S.* in debt. 3 *Jac.* and *B.* had judgment in debt against *J. S.* 4 *Jac.* *A.* 10 *Jac.* had an *elegit*, and the sheriff delivered a moiety of the lands, but did not return his writ: And thereupon, *B.* endeavoured to have an *elegit* upon

upon his judgment, and to turn *A.* out of possession, but *per Coke*, If *B.* should turn *J. S.* out of possession, *A.* may have a new *elegit*, because his judgment is prior to the other. *Roll. Rep.* 77. pl. 18. *Brete v. Foster.*

An *elegit* executed, and a claim by extent on a statute acknowledged in the same term, but before the judgment was given. The reporter says, he heard that it was adjudged, that the plaintiff had the better title, being in possession under a judgment. *Latch.* 53. *Gerrard v. Norris.*

If a *fi. fa.* and *elegit* be delivered at same time, with an extent at a common person's suit, the *fi. fa.* and *elegit* shall take place, because the goods shall be attendant to satisfy, in the first place the judgment of the superior court. *Brok.* 97.

If the land be first executed upon a statute, and afterwards an *elegit* upon a judgment obtained before the acknowledging of the statute come also to the sheriff, the moiety of the land extended, shall be delivered to the plaintiff upon the judgment. *1 Brownl.* 38.

Elegit issued against him who had two manors, the sheriff may deliver the one manor to the plaintiff, in the name of the moiety of all, and is not bound to deliver the moiety of every manor. *Br. Elegit.* pl. 14. So, of two acres, and this seems to be where they are of equal value. *Ibid.*

If a writ of error be brought, and the judgment reversed, the goods in *specie* shall be restored, and not the value, but upon a *fieri facias*, the value and not the goods in *specie*; and the reason of the difference is, that on the *fieri facias*, the sheriff is to sell to any buyer, but in the *elegit*, he is only to deliver it to the plaintiff; therefore, when the writ of error has reversed the judgment in the one case, the defendant is restored to the money, in the other, to the goods themselves; for he is to be restored to what he has lost by the writ as it was awarded, which in the case of a *fieri facias*, was the money, but in the *elegit*, the goods themselves delivered

An *elegit* executed a claim by extent, the judgment a better title.

If a *fi. fa.* and *elegit*.

If the land be first executed on a statute, and after *elegit*, obtained before acknowledgment of the statute.

How to deliver, where there are two manors.

So of two acres.

If error brought, and judgment reversed; the goods in *specie* to be restored, and not the value.

delivered over to the plaintiff. *Roll. Abr.* 778, *Godb.* 27. 2 *Lev.* 92. *pl.* 115. 5 *Co.* 90. *Moor* 573. *pl.* 788. *Yelv.* 179. *Cro. Jac.* 246, 247.

On the second *elegit*, the sheriff can only deliver a moiety of the moiety left.

Two persons recovered severally against one in debt, he who had the first judgment sued first an *elegit*, and had the moiety of the land delivered in execution, after the other sued the *elegit*; and the sheriff prayed the advice of the court. *Per cur.* He shall deliver the moiety of that moiety, which he had at the time of the writ awarded. *Cro. Eliz.* 482. *Dalt.* 532. Yet, if both judgments are of the same term, each may take a moiety of the whole.

Cannot deliver a lease at another value than what is found.

The sheriff cannot deliver a lease upon an *elegit* at another value than what the jury had found it at; and the sale made by him is as good as if made in market overt. *Brownl.* 38, 39.

When the plaintiff on the return of an *elegit*, prays another in the same county.

The sheriff delivers some lands upon an *elegit*, the plaintiff came into court, and prayed another *elegit* in the same county, and had it; and whether it was void or no? *Curia.* If it appears, that the plaintiff had accepted the first land upon the delivery of the sheriff, he cannot take a new *elegit*, if he doth, it is void: But if he comes at the return of the first *elegit*, and prays a new one, he shall have it, he never having accepted of the first. *Cro. Eliz.* 310. *pl.* 9.

When he may have it.

After inquisition taken, it is to be filed.

After the inquisition is taken by the sheriff, it shall be returned and filed. *Dyer* 100. And after it is filed, it shall not be avoided upon surmise, that more is extended than a moiety. 2 *Inst.* 396. Or, that it was extended at a small value. 2 *Cha. Ca.* 183. And though the extent was at an under value, the plaintiff shall account only for the value at which the extent is. *Ibid.* 183.

But before inquisition filed, court may examine it, and stop the filing.

But before the inquisition filed, the court may examine it; and if they find fraud, partiality, &c., may stop the filing, and award a new *elegit*. 2 *Inst.* 396.

Charge to the jury.

"Your charge is to enquire what goods and chattels, (except the oxen and beasts of the plough) and also, what lands and tenements

"G. D.

"C. D. hath or had, or is or was seized of, in
 "the bailiwick of the sheriff of *Oxford*, on the
 "23d day of *October*, in the 26th year of his
 "majesty's reign, or any time since: And also to
 "enquire and say, What is one moiety of all the
 "said lands and tenements, that the same may at
 "a reasonable price and extent be made to be de-
 "livered to *A. B.* to hold as his own proper
 "goods and chattels: And also, to hold the said
 "moiety of the said lands and tenements to the
 "said *A. B.* and his assigns, as his free tenements,
 "according to the form of the statute, &c."

Sheriff's Fees.

FEES are certain perquisites allowed to officers Fees what.
 who have to do with the administration of
 justice, as a recompence for their labour and trouble.
 And these are either ascertained by acts of parlia-
 ment, or established by antient usage, which gives
 them an equal sanction with an act of parliament.

Here we must observe in general, that it is extor-
 tion for any officer to take more for executing
 his office, than is allowed by an act of parliament,
 or is the known and settled fee in such case.

By the statute of 28 *Eliz. cap. 4.* it is enacted,
 "That it shall not be lawful to, or for any sheriff,
 "under-sheriff, bailiff of franchises or liberties,
 "nor for any of their or either of their officers,
 "ministers, servants, bailiffs, or deputies; nor for
 "any of them, by reason or colour of their or
 "either of their office, or offices, to have, receive,
 "or take, of any person or persons whatsoever,
 "directly or indirectly, for the serving and exe-
 "cuting of any *extent* or *execution* upon the *body*
 "lands, goods or chattels, of any person or persons
 "whatsoever, more or other consideration or re-
 "compence, than in this present act is, and shall
 "be limited and appointed, which shall be law-
 "ful

The sheriff not
 to receive more
 than 12d. for
 every 20s. where
 the sum does not
 exceed above
 100l. and 6d.
 for every 20s.
 over.

“ful to be had, received and taken; (that is to
 “say twelve-pence of and for every twenty shil-
 “lings, where the sum exceedeth not 100*l.* and
 “six-pence of and for every 20*s.* being over and
 “above the said sum of 100*l.* that he or they shall
 “so levy or extend, and deliver in execution, or
 “take the body in execution for, by virtue and
 “force of any such extent or execution whatso-
 “ever: upon pain and penalty that all and every
 “sheriff, under-sheriff, bailiff of franchises and
 “liberties, their and every of their ministers, ser-
 “vants, officers, bailiffs or deputies, which at any
 “time shall directly or indirectly do the contrary,
 “shall lose and forfeit to the party grieved his
 “treble damages, and shall forfeit the sum of 40*l.*
 “for every time that he, they, or any of them
 “shall do the contrary; the one moiety thereof,
 “to be to our sovereign lady the queen, her heirs
 “and successors; and the other moiety thereof to
 “the party or parties that will sue for the same,
 “by any plaint, action, suit, bill, or information,
 “wherein no essoin, wager of law, or protection
 “shall be allowed.

Not to extend to
 executions with-
 in any city.

“Provided always, that this act, or any thing
 “therein contained, shall not extend to any fees
 “to be taken or had for any execution, within any
 “city or town corporate.”

In the construction of this statute, the following
 points have been holden,

A right is given
 to the sheriff, to
 demand the fees,
 mentioned in the
 act, and he may
 bring debt for
 them.

1st. That though the words of the statute are,
 that it shall not be lawful for the sheriff to take any
 more, or greater fee, than by the act is limited,
 &c. that herein by implication at least, if not by
 express words, a right is given the sheriff to de-
 mand those fees mentioned in the statute: and con-
 sequently that he may, as in all cases where a sta-
 tute creates a debt or duty, maintain an action of
 debt for them. *Moor*, 853. *pl.* 1166. *Proby* and
Lumley adjudged. *Latch.* 19. *Poph.* 175. *Palm.*
 400. *Salk.* 331.

2d. It hath been adjudged, that the sheriff shall have a shilling *per* pound for every other pound exceeding a hundred: and not six-pence for every pound, where the whole debt happens to exceed a hundred pound: for by this construction the sheriff would have less where the debt was 199*l.* than if it were but 100*l.* and the intention of the statute was, to allow sheriffs, such reasonable fees as would encourage them to discharge this branch of their duty, so much favoured by the law, with vigour and success, who before were backward and intimidated, by reason of the dangers they run from escapes, &c. from engaging herein: and therefore it has been held the most reasonable construction to allow them their fees in proportion to such danger.

That he shall have 1*s.* for the first 100*l.* and 6*d.* for every other 100*l.*

The poundage was given to encourage sheriffs to discharge their duty, by reason of dangers they run.

3d. It hath been resolved, on the proviso of the said statute, that it shall not extend to any fees to be taken for any execution within any *city or town corporate*; that this must be intended of executions on judgments given in those courts: and that therefore where a sheriff executes a judgment given in *Westminster-Hall*, in a *city or town corporate*, he is as much intitled to his fees, pursuant to this statute, as if the execution had been done in any part of the county at large; for herein the sheriff runs as great a risque, and his trouble is as great: but where both the judgment and execution are within a limited jurisdiction, it cannot be presumed to be attended with equal difficulty; and therefore the proviso in the statute excludes them.

That the proviso shall not extend to any fees taken for execution, within any city, and on judgments in those courts only.

Latch. 17, 18. *Popb.* 173. *Palm.* 399, 400. *Dalt.* 527. *Cro. Eliz.* 263. 5 *Mod.* 97. *Salk.* 331.

4th. It hath been resolved, that the bailiff of a liberty, who executes an execution on a judgment given in *Westminster-Hall*, is intitled to the fees, within the words and meaning of the statute: and not the sheriff of the county, who directs his precept to him. *Latch.* 19. 52. *Salk.* 331. *pl.* 4 *Dalt.* 526.

Bailiff of a liberty who executes an execution, intitled to the fees.

5th. It seems agreed, that if a sheriff makes an
extent

extent and before the *liberate*, a new sheriff is chosen, the new sheriff shall have the fees appointed by the statute. *Winch.* 50, 51. *Dalt.* 526.

Statute does not extend to real executions, but to executions in personal actions.

Nor on statutes, merchant, &c.

No fee due on executing a *capias utlagatum* by this act.

On a *ca. sa.* sheriff to have his fees for the whole debt, vide 3 Geo. 3. c. 15. s. 17.

Statute is called 29 Eliz. but is 28 Eliz.

Extortion what?

Debt brought for fees for executing an *elegit*, verdict for plaintiff.

Holt C. J. there was no reason why he should

6th. It hath been resolved, that the statute does not extend to real executions, such as *habere facias seisinam*, or *possessionem*, but only to executions in personal actions: also it is said, that the statute does not extend to executions upon statute merchants, recognizances, &c. and that the act is to be understood of cases where the judgment *redditur in invitum*, and not by the voluntary confession of the party. but *qu.* *Salk.* 331.

7th. That for executing a *capias utlagatum*, or for a warrant to execute it, or for a return of it, no fee is due to the sheriff, because this is at the suit of the king. *Het.* 52. 2 *Brownl.* 283.

8th. It seems to have been resolved, that upon a *capias ad satisfaciendum*, the sheriff shall have his fees for the whole debt: also if one in execution dies, and a *fieri facias* issue against his goods, the sheriff shall have his fees upon executing the *fieri facias*, for his trouble was as great as at the first, *Salk.* 331. pl. 6.

In the printed statute this is called 29 *Eliz.* but by the parliament roll it is the 28th and so ought to be recited. *Salk.* 331. pl. 4. *Skin.* 363. pl. 7.

It is extortion for an officer to take his fee before it is due; and therefore, where an under-sheriff refused to execute a *capias ad satisfaciendum*, till he had his fees, the court held, that the plaintiff might bring an action against him for not doing his duty, or might pay him his fees, and then indict him for extortion. *Co. Litt.* 368. *Salk.* 330. pl. 3. 335. pl. 5.

An action of debt was brought by the sheriff of *Cambridgeshire* upon the 29th *Eliz.* c. 4. for his fees for executing an *elegit*; and upon *nil debet*, pleaded, there was a verdict for the plaintiff.

Holt, Chief Justice said, that there was no reason why the sheriff should not have fees, as well for executing an *elegit*, as an *extent* upon a statute.

Upon

Upon the writ of *elegit*, the sheriff returns, that he has taken an inquisition, and extended the defendant's land, and delivered it to the plaintiff.

And there is a *liberate* in the body of the writ of *elegit*; otherwise, in case of an extent upon a statute, there must be a *liberate*. And in case of the *elegit*, upon the return of delivery, the plaintiff may enter; and he can do no more, in case of a statute after a *liberate* executed, for he must not enter by force.

The return of *liberari feci*, is a full execution of the writ of *elegit*, and by that the plaintiff becomes tenant by *elegit*, and may maintain an ejectment; and he may enter and assign his interest upon the land, and the assignment will be good. For the defendant's continuing in possession after the return of the writ, turns the plaintiff's estate to a right; and therefore he must enter before he can assign it over.

Powel, Justice said, That the like case with this was adjudged in the *common pleas*, while he sat there; that all the objections, that are here made to the action, were made there and overruled; that the court there resolved, that the statute of *Eliz.* mentioning extents that should not be confined to extents upon statutes only, but should be carried to extents upon *elegits*; especially when they were both equally liable to the same exceptions: And therefore, he was of opinion, that the sheriff should have his fees for executing an *elegit*. The other two judges agreed. 2 *Lord Raym.* 1212. *Tyson v. Parke.*

The objections are, that no fees were due, consequently no action lay, and where the lands lie in several counties, a man may pay more in fees, than his debt.

For ascertaining the fees for executing writs of *elegit*, so far as the same relate to the extending of real estate; and for ascertaining the fees for executing of writs of *habere facias possessionem aut seisinam*, be it enacted, That from and after the last day of *Michaelmas* term 1717, it shall not be lawful for

not have fees for an *elegit*.

There is a *liberate* in the execution. Upon return, plaintiff may enter.

The return of *liberari feci* a full execution of the writ, and the plaintiff becomes tenant by *elegit*.

Powel, J. the like with this, a case was adjudged in C. P.

The act should be carried to extend on *elegit*.

The objections.

No sheriff, under sheriff, deputy, or bailiff of any franchise, &c. shall, for executing an *habere facias possessionem aut seisinam*, de-

for

mand or receive above 12d. per pound of the yearly value of any manor, messuage, lands, tenements or hereditaments, whereof possession or seisin shall be given, whereof the whole exceeds not 100l. per annum, or 6d. for every 20s. above 100l. yearly value.

for any sheriff, under-sheriff, deputy-sheriff, or their bailiffs, or for the bailiff of any franchise or liberty, or any of them, by reason or colour of their executing of any writ or writs of *habere facias possessionem aut seisinam*, to demand, ask, or receive, any other or greater consideration, fee, gratuity or reward, than is hereafter mentioned, (which shall be lawful to be demanded and taken,) that is to say, the sum of 12d. for every 20s. of the yearly value of any manors, messuage, lands, tenements and hereditaments, whereof possession or seisin shall be by them, or any of them given, where the whole exceedeth not the yearly value of 100l. and the sum of 6d. for every 20s. *per annum*, over and above the said yearly value of 100l.

Execution, in real or mixed Actions.

If plaintiff recovers in a real or mixed action, he is to have execution awarded to him, *habere facias seisinam* of a freehold, and *habere facias possessionem* of a chattel interest. When the judgment was extended to the recovery of a term in ejectment, gave birth to the *hab. fac. poss.*

IF the plaintiff recovers in an action, real or mixed, wherein the seisin or possession of land is awarded to him, the writ of execution shall be an *habere facias seisinam*, or writ of *seisin*, of a freehold; or an *habere facias possessionem*, or writ of possession of a chattel interest. *Finch. 470.*

When the judgment in ejectment was extended to a recovery of the term itself (the judgment originally being only for damages, it of consequence gave birth to the *habere facias possessionem* in ejectment. In real actions, where the freehold was recovered, the demandant had execution by the writ of *habere facias seisinam*; in ejectment therefore, it was but just that a similar remedy should be permitted to the plaintiff, who, as he now had judgment to recover the possession of the land, might put the sentence of the law in execution, by virtue of the *habere facias possessionem*. *Gilb. Eject. 148.*

These are writs directed to the sheriff of the county, commanding him to give actual possession to the plaintiff of the land so recovered; if he be denied

denied entrance by the tenant, break open the door, and take with him the *pos. com.* 5 Co. 91. if the possession be not quietly delivered, also he may remove all persons in the house, and ought so to do. 1 Lev. 145. But if it be peaceably yielded up, the delivery of a twig, a turf, or the ring of the door, in the name of seisin, is sufficient execution of the writ, *Br. Rediff.* 5. *Perk.* 42. the end of the writ being to give the party full and actual possession; consequently the sheriff must have all power necessary for this end; besides, in this case the law does not after the judgment, look upon the house as belonging to the tenant, but to him who has recovered. 5 Co. 91.

The sheriff upon the *habere facias seisinam*, may, and ought to execute the writ, although that indeed an estranger be seized of the land, and that neither of the parties to the writ were ever seized thereof. *Plowd.* 12, 13.

If a common recovery be had of divers messuages, the sheriff upon the writ of execution, may make execution in one of them, in the name of all, without going to every one in particular, but if a man is to be put in execution of divers messuages upon a writ of execution, and the houses are in the possession of several men, he ought to go to every house particularly, and to deliver seisin thereof, for delivery of seisin in one, in the name of all, when they are in several men's possessions is not sufficient, because the possession of one tenant, is not the possession of the other, but each hath his several possession; 1 *Roll. Abr.* 886. *Roll. Rep.* 421. But it seems, that if all the messuages had been in possession of one tenant, it had been sufficient to give possession of one in the name of all. *Ibid.*

But the surest and best way is, for the sheriff to remove all the tenants intirely out of each house, and when the possession is quitted, to deliver it to the plaintiff.

May take *posse comitatus*.

Sheriff on *hab. fac. seif.* ought to execute the writ, although a stranger be seized of the land.

Where a common recovery is had of several houses, the sheriff may deliver possession in one, in the name of all. But it is otherwise where houses are recovered in ejectment.

Surest way.

Land may be delivered in execution, without setting forth the metes and bounds

If a man upon an ejectment, for 40 acres of land, recovers 30, and not the residue, upon the *habere fac. pos.* the sheriff may deliver him three or more of the acres, in the name of the whole, without dividing of it by metes and bounds tho' the plaintiff has not recovered all the acres whereof he has brought his action, and of which he has supposed the defendant tenant. *Trin. 15 Jac. B. R. adjudged. 10. V. 539.*

If writ be for 20 acres so much by estimation of the country must be delivered.

If an *hab. fac. poss.* go to the sheriff to put a man in possession of 20 acres of land, the sheriff ought to give him 20 acres in quantity, according to the custom of the country where this is, and not according to the statute. *Roll. Rep. 420. Bridg. 56. Floyd v. Bethel.*

Upon recovery of rent or common, the sheriff may deliver possession by word only.

If a man recover rent or common, whereupon a writ of possession issues out, and the sheriff comes upon the land, and delivers seisin of the rent or common by word only, this is well done, and the recoveror is in actual possession by it. *Ibid. Br. Seisin. pl. 36. 2 Aff. 24.*

If there is a recovery of an house, sheriff may put the party in possession by delivering to him the ring of the door of the house, or may open the door, and bid him enter, and take possession. *Park. 43.*

If sheriff thrusts out all he can find, and after he is gone, some persons lurking in the house left, may re-execute.

If the sheriff thrusts out all persons he can find in the house, and gives the plaintiff, as he thinks, quiet possession, and after the sheriff is gone there appears some persons to be lurking in the house, this is no good execution, and therefore the plaintiff shall have a new *habere fac. pos.* because he never had execution. *1 Leon. 145.* But if not returnable, why not re-execute the writ.

Where the recovery is of land, and more than demanded by 500 acres,

Where the recovery is of land, and there was more demanded than recovered; as suppose the demand had been for 500 acres, and a verdict and judgment only for an 100 acres, it is not sufficient to give possession of one acre in the name of the whole that are recovered, but he must set forth all the acres in particular, so that the recoverors shall have the benefit of the judgment by certainty, and the

'Tis sufficient to give possession of 3 acres in the name of the whole.

the several profits, without interruption or disturbance. *Palm.* 289. *Molineux v. Fulgam.*

If the defendant dies before the execution, it may be done against his heir; for, in ejectment, the ejector by intendment is a disseisor. *1 Roll.* 887. *l.* 10.

If defendant dies before execution,

If tested before lessor of plaintiff's death, tho' not sued out till after it, it is regular. *4 Bur.* 1970.

If tested before lessor dies, sufficient.

If on a judgment in ejectment for 5 eighths of a cottage, the sheriff gives possession of the whole, the court will make a rule on sheriff and the lessor of plaintiff, to restore possession of three eighths to the tenant. *3 Wils.* 49.

If judgment for five eighths, and sheriff gives possession of the whole.

Until the bailiffs are withdrawn, and possession compleatly given, the execution is not compleat. *1 Salk.* 321. *1 Lev.* 145.

When possession compleat,

If the recovery be of a rent, the sheriff may put the party in seisin thereof, by the corn or grass growing on the land, out of which the rent is issuing; or by the twig or bough of a tree growing upon the same land; or by distress of cattle *levant* and *couchant* upon the same land; or by a clod of the same land. And this is a good seisin of the rent, notwithstanding that the day of payment of the rent be not then come. *Dalt.* 255.

If recovery of a rent, how to put party in possession.

The sheriff is not bound to know or seek the land demanded; and therefore, except the demandant shew it to him, he may make his return accordingly. *Dalt.* 255. *4 Burr.* 2673. and plaintiff is to take possession of no more than he is intitled to. *Ibid.*

Sheriff not bound to know or seek the land,

If a man recovers lands in three towns, and hath a writ of execution awarded to the sheriff, the sheriff may deliver him in execution and possession of the land in one town, in the name of all the land, and it is a good execution for all the lands recovered in all the three several towns. *Dalt.* 256.

If a recovery in three towns, how sheriff to give possession.

In ejectment the old rule was, that there ought to be a sufficient certainty specified in the writ, that

The sheriff is to be shewn the premises and plain-

tiff to take possession at his peril.

that the sheriff may know how to deliver possession. But since the case in *Saville* 28, that doctrine is exploded, for the plaintiff is to shew the sheriff, and take possession at his peril, of only what he has title to. If he takes more, the court will in a summary way, set it right. *Cottingham v. King*. 1 Burr. 629. The sheriff delivers possession at the shewing of the plaintiff. 5 Burr. 2673. *Connor v. West*.

If shewn a stranger's land.

It is said if the demandant shall shew to the sheriff a stranger's land, by force whereof the sheriff enters, &c. yet he is no trespasser. *Keilw.* 119. 120. *Dalt.* 257.

If disturbed in the execution an attachment will be granted.

If the officer be disturbed in the execution of the writ, on an affidavit, the court will grant an attachment against the party, whether he be the defendant or a stranger; because the writ is the process of the court, and any disturbance given to the execution of it is a contempt to the authority of the court from whence it issues, and as such will be punished by the court. *Mod. Cases* 27.

Escape.

Escape derivation of the word,

ESCAPE (*escapium* from the French *eschapper* i. e. *effugere* to fly) signifies a violent or privy evasion out of some lawful restraint; as where a person is arrested or imprisoned, and gets away before delivered by due course of law. *Stamf. Pl. C.* c. 26, 27.

Also understood to be:

Escape is also understood to be when any person who being under lawful arrest, and restrained of his liberty, either violently or privily evades such arrest and restraint, or is suffered to go at large before delivered by due course of law.

Escapes in civil cases, what.

They are in *civil*, or in *criminal* cases. As to escapes in civil cases, it seems agreed as a general rule that wherever a sheriff or other officer hath a person in custody, by virtue of an authority from
I a court

a court which hath jurisdiction over the matter, that the suffering such a person to go at large is an escape, for he cannot judge of the validity of the process or other proceeding of such court, and therefore cannot take advantage of any errors in them; hence the law allows him, in an action of false imprisonment, to plead such authority; which will excuse him, though it be erroneous; but if the court has no jurisdiction of the matter, then all is void; and consequently the officer not punishable for suffering a person taken up on such void authority to escape. *Moor* 274. *Dyer* 175. *Poph.* 203. 2 *Str.* 820. 1184. 509. 2 *Lord Raym.* 1530.

The law allows sheriffs to justify under the authority.

But if the court has no jurisdiction, all is void.

Upon this distinction it hath been adjudged that if a *ca. sa.* issue after a year and a day, without suing out a *scire facias*, this error will not excuse the sheriff in an escape. *Cro. Car.* 28. *Salk.* 273.

If a *ca. sa.* issues after a year and day, the sheriff tho' no *sci. fa.* issued, is liable if defendant escapes.

But though a sheriff may not take advantage of an erroneous process, yet he shall of a void process, on which it is no escape to let a prisoner go.

The sheriff may not take advantage of erroneous process.

The sheriff cannot be charged with an escape before he had the party in actual custody by a *legal* authority; and therefore if an officer, having a warrant to arrest a man see him shut up in a house, and challenge him as his prisoner, but never actually have him in his custody, and the party get free, here the officer cannot be charged with an escape. *Bro. Escape.* 22.

Cannot be charged with an escape, before he had defendant in actual custody.

But if *A.* is arrested, and in the actual custody of the sheriff, and afterwards another writ is delivered to him at the suit of *J. S.* upon the delivery of the writ *A.* by construction of law is immediately in the sheriff's custody, without an actual arrest; and if he escapes, the plaintiff may declare, that he was arrested by virtue of the second writ, which is the operation it has by law, and not according to the fact. 5 *Co.* 89. But where the sheriff, not having actually arrested defendant, but accepts an undertaking of his attorney this was

If in actual custody, and another writ comes, he must detain, or it is an escape.

If no actual arrest and takes an undertaking not liable to a detain-

held to be no escape. *Hodgson v. Akerman, Esq. Lord Mansfield's Summer Ass. 1776.*

If any one desires to charge in custody, and wishes to be informed of the prisoner, marshal, &c. to give a true note in writing, and in default to forfeit 50 l.

For the greater security of creditors, and the better to enable them to prove the actual custody of the prisoner the *stat. 8 & 9. W. 3. c. 27. sect. 9.* enacts, "that if any one, desiring to charge any one with any action or execution, shall be desired to be informed by the marshal or warden, or their respective deputies, or by any other keeper of any other prison, whether such person be a prisoner in his custody, or not, the marshal or warden, or such other keeper, shall give a true note in writing thereof, to the person so requesting the same, or to his lawful attorney, upon demand, at his office for that purpose, or, in default thereof, shall forfeit 50 l. and if such marshal, &c. shall give a note in writing, that such person is an actual prisoner in his or their custody, every such note shall be taken as a sufficient evidence, that such person was at that time, a prisoner in actual custody."

Every person to be kept in safe and close custody

Every person in prison by process of law is to be kept in *salva & arcta custodia*, in order to compel them the more speedily to pay their debts, and make satisfaction to their creditors. *Plow. 36. 3 Co. 44. 2 Inst. 381. 1 Rel. Abrid. 806.*

To be detained in prison, if an escape, debt lies.

By *stat. 1 R. 2. c. 12.* Persons in the King's-Bench and *Fleet* prisons, are to be actually detained within the said prisons, and if they escape, debt lies against the warden, &c. But now the marshal or warden grant the liberty of the rules to such as they think proper, (not criminally charged) on proper security.

But now the marshal, &c. may grant the liberty of the rules.

Plaintiff's licence to deliver, no action lies.

If the plaintiff by word, license the sheriff to deliver the prisoner, no action will lie for an escape, *27 H. 8. Ch. 24.*

Liable if committed on an escape warrant, &c.

The sheriff shall be liable for an escape, of any committed to him on an escape warrant. *1 Ann. Stat. 1. c. 6.* So on process of the admiralty. *Sav. 11. 15.* or on a *capias utlagatum.* *5 Mod. 200.*

There

There are two kinds of escapes, the one *voluntary*, and the other *negligent*.

Two kinds of escape.

Voluntary, is when an officer arrests another for a debt and lets him go by consent, in which case the sheriff is answerable to the plaintiff for the damages, for a voluntary escape cannot be justified. Therefore where one was intrusted with the keys of the prison, and he lets himself out, this is a voluntary escape. *Cas. in Temp. Ld. Hard. 311.*

Voluntary what.

But where the turnkey lets the prisoner out, it was held, that he not being the warden's deputy, it was a negligent escape, and not voluntary. But had he been the warden's deputy, it had been otherwise. *Ibid.*

Wardens and turnkey to the Fleet.

Negligent escape, is when one is arrested, and afterwards escapes, against the will of him that arrested him, or had him in custody; and is not pursued by *fresh suit*, and taken again before the party pursuing hath lost sight of him. *Crompt. Inst. 36.*

Negligent escape.

In civil suits, if there is a negligent escape the sheriff may justify by recaption. *Cas. in Temp. Ld. Hard. 311.*

Sheriff may justify this escape.

There is a difference between an escape on *mesne process*, and *execution*; if the sheriff arrest a person on *mesne process*, and he is rescued by *J. S.* he may return the rescue, and such return is good, and no action of escape lies against him, after such return. *1 Roll. Abr. 807. 1 Jon. 207. 1 Roll. Rep. 388. 3 Lev. 46.*

Difference between an escape on mesne process and execution.

But after judgment on a *capias ad satisfaciendum*, the defendant is arrested, the sheriff cannot return a rescue, for in such case the sheriff is obliged to raise the *posse comitatus*, if needful. *1 Roll. 807. Gro. Car. 240. 255. 8 Co. 42. Cro. Eliz. 868. Bull Nisi Pri. 59. 60.*

If after judgment on a ca. sa. sheriff cannot return a rescue but must raise posse.

If a man be taken in execution upon a *capias ad satisfaciendum*, and is committed to the gaol, and the sheriff suffereth him to make an escape, the sheriff is chargeable for the whole debt. *3 Co. 5. Dalt. 484.*

If taken in execution, and escapes, debt lies.

Action on the case for an escape, upon mesne process, not guilty pleaded, it turns out on a voluntary escape the prisoner returns to the Fleet the same day. And the plaintiff proceeds to final judgment, yet the action lies against the warden, though not brought till after final judgment obtained.

Prisoner on voluntary escape is instantly at large, and gaoler cannot retake.

Plaintiff may retake, but at his option.

Not now a prisoner at plaintiff's suit.

Nothing purges a voluntary escape.

It was held that when sheriff suffered a voluntary escape, the prisoner was discharged from the

In *Trin.* term 1774, a declaration was delivered to the turnkey of the *Fleet* against defendant who was a prisoner. On 1st of *Oct.* the defendant voluntarily permitted him to escape and go at large. That plaintiff knowing of such escape on first of *October* did proceed, and in *Hilary* term obtained final judgment. That after final judgement, the plaintiff commenced his present action against the warden.

Defendant having so escaped on first of *October*, returned to the *Fleet* prison on same day, and has ever since continued therein in defendant's custody. Verdict for plaintiff subject to the opinion of the court.

Cur. whenever a gaoler permits a *voluntary escape*, from that moment he commits a *tort*, and the plaintiff has a right of action to recover such damages as a jury shall please to give him; the prisoner when voluntarily suffered by the gaoler to escape is instantly at large, the gaoler cannot afterwards retake and detain him for the same matter; the plaintiff may retake him by an escape warrant, but has his option to proceed as he pleases, either against the defendant, or the warden; defendant is not now a prisoner at the plaintiff's suit, altho' he be locked up every night, and tho' the plaintiff might lawfully proceed to judgment against him, yet he could not charge him in execution, *Skin.* 582, is in point. There is not the least doubt, but that judgment ought to be for the plaintiff, and if we should do otherwise we should permit every gaoler in *England* to let his prisoners go at large, as much as if they had never been arrested; if the escape be *voluntary* in the gaoler, nothing afterwards will purge it. *Salk.* 271. Judgment for the plaintiff. *Ravenscroft v. Eyles.* 2 *Wils.* 294.

It was formerly held that when the sheriff suffered a prisoner in execution to make a voluntary escape, the prisoner was in such case absolutely discharged from the creditor, and that the right of action was entirely transferred against the sheriff, who

who by means of such escape became *debitor ex delicto*. Leon. 73.

But the stat. 8 & 9 W. 3. c. 26. hath taken away all distinction between *voluntary* and *permissive* escapes, with regard to the plaintiff's remedy, enacting, "That if any prisoner who is or shall be committed in execution to either or any of the said respective prisons, shall escape from thence by any ways or means howsoever, the creditor or creditors, at whose suit such prisoner was charged in execution at the time of his escape, shall or may retake such prisoner by any new *capias*, or *capias ad satisfaciendum*, or sue forth any other kind of execution on the judgment, as if the body of the prisoner had never been taken in execution." s. 7.

But this act does not take away the plaintiff's remedy by action for the escape against the sheriff, for he has no occasion to proceed against the defendant unless he thinks proper, but against the sheriff for his damages and leave the sheriff to justify his conduct.

"If any marshall or warden, or their respective deputy or deputies, or any keeper of any other prison within this kingdom, shall take any sum of money, reward or gratuity whatsoever, or security for the same, to procure, assist, connive at, or permit any such escape, and shall be thereof lawfully convicted, the said marshall or warden, or their respective deputy or deputies, or such other keeper of any prisons as aforesaid, shall for every such offence forfeit 500 l. and his said offence, and be for ever after incapable of executing any such office." 8 & 9 W. 3. c. 26. s. 4.

All prisoners either upon *contempt* or *mesne process*, or in execution, who shall be committed to the custody of the marshall of the *King's Bench* prison, or warden of the *Fleet*, shall be detained within the said prisons or the rules of the same, until they be discharged by due course of law; and if the said marshall or warden, or any other keeper of any prison

creditor and action transferred to the sheriff.

But now voluntary and permissive escapes are taken away with regard to the plaintiff by this act, enacting, that the creditor on the debtors escape from the prison, may have a new writ to retake him.

Does not take away plaintiff's right against the sheriff.

If the marshall, &c. shall take any reward from any prisoner to effect an escape he forfeits 500 l.

All prisoners either on contempt or mesne process, or in execution, shall be detained within the prison or rules, unless by ha. corp. or rule of court.

son shall suffer any prisoner to go at large out of the rules (*except by habeas corpus, or rule of court, which rule shall not be granted, but by motion made, or petition read in court*) every such going or being out of the said rules shall be adjudged and deemed, and is hereby declared to be an escape. 8 & 9 W. 3. c. 26. f. 1.

Every person obtaining judgment against the marshall or warden to have all remedies against them by law allowed, but judges to sequester the profits of the office.

Every person obtaining judgment in any escape against the marshall or warden, or their deputies, shall have not only the remedies already by law allowed, but the judges of the courts where such judgments shall be obtained (upon oath made by the persons obtaining such judgment, that the same was obtained without fraud or covin, and that the debt of the prisoner making such escape was a true and real debt, and unsatisfied) shall upon motion, sequester the profits of the office of marshall and warden, or so much thereof, as they shall think fit, and apply the same towards satisfaction of the debt due from the prisoner who escaped, together with all cost and damages recovered. And if they sue forth any writ of error they shall put in bail. f. 2. 3.

If they bring error, bail.

If a bankrupt is committed and escape to forfeit 500*l*.

By stat. 5 Geo. 2. c. 30. In case any gaoler, to whom a bankrupt is committed, shall wilfully suffer such person to escape, or to go without the walls or doors of the prison, such gaoler shall for such offence, being convicted by indictment or information, forfeit 500*l*. for the use of the creditors. f. 18.

If a sheriff or officer does by colour of a ha. corp. suffer a prisoner to go at large, it is an escape.

The writ of *habeas corpus* is an ancient writ, and what the subject is by law intitled thereto; yet if a sheriff or other officer, who hath the custody of a prisoner, does by colour thereof suffer the prisoner to go at large, it is an escape. *Cro. Car.* 14. *Roll. Abr.* 808. *Hob.* 202. 3 Co. 44.

If ha. corp. be returnable the next term, and the sheriff lets the prisoner go, it is an escape, though

As if an *habeas corpus* be returnable the next term, and the sheriff or gaoler in the mean time suffers the prisoner to go at large, it is an escape, though he appear at the return of the writ; for the writ only empowers the gaoler to bring him directly

directly to the court, and if he gives him any liberty in the mean time, it is at his peril. *Hard.* he appear at the return of the writ.

476.

As the sheriff must be careful that he does not give the prisoner more liberty than by law he ought to do, when he acts in obedience to a lawful authority; so he must take care that he does not let him go at large by colour of a void authority. *Dalt.* Sheriff, 486. Must take care that he does not let the prisoner more at liberty than he ought.

“That if any marshall or warden for the time being, or their respective deputy or deputies, or other keeper or keepers of any other prison or prisons, shall, after one day’s notice in writing given for that purpose, refuse to shew any prisoner committed in execution to the creditor, at whose suit such prisoner was committed or charged, or to his attorney, every such refusal shall be adjudged to be an escape in law.” 8 & 9 W. 3. c. 27. sect. 8. Upon one day’s notice in writing, the marshall, &c. shall shew the prisoner to the creditor at whose suit he is at, or shall be judged, an escape.

The gaoler shall upon request of any creditor, having proved his debt, and producing a certificate thereof under the hands of the commissioners (which the commissioners are to give *gratis*) produce such person so committed: and in case of refusal he shall forfeit 100 l. for the use of the creditors, to be recovered by action of debt in the name of the creditor requesting such sight. 5 Geo. 2. c. 30. f. 19. Gaoler to produce bankrupt to creditor.

If an officer hath arrested a man by virtue of a *capias* or *latitat*, and gives him a day, and the officer lets the party go, who comes not again, it is said, the officer cannot take his prisoner again, by virtue of his former writ or warrant, for that the officer gave the prisoner leave, &c. *Dalt.* 113. If the defendant is let go voluntarily he cannot be retaken.

But if the party arrested had escaped of his own wrong, without the consent of the officer, now upon fresh suit, the officer may take him again and again, so often as he escapeth, although he were out of view, or that he shall fly into another town or county, and bring him before the justice upon whose warrant he was first arrested. *Dalt.* c. 113. But if he is arrested and escapes of his own wrong the officer may take him.

But

Yet it is said in
some books, that
he may retake,
and this with
good reason.

But it is said generally in some books, that an officer who hath negligently suffered a prisoner to escape, may retake him wherever he finds him, without mentioning any fresh pursuit; and indeed since the liberty gained by the prisoner is wholly owing to his own wrong, there seems to be no reason he should take any manner of advantage from it. 2 *Haw.* 131, 132.

Escape Warrant.

Persons in the
Queen's Bench
or Fleet prison,
committed, or
rendered, or
charged in the
custody of the
marshall or Fleet
prison on mesne
process or execu-
tion, &c.

Making escape
&c.

It shall be lawful
upon oath there-
of made, for the
judge to grant a
warrant for re-
taking such pri-
soner.

BY stat. 1 *Ann.* c. 6. It is enacted, " That
" if any person or persons already committed,
" rendered or charged, or who shall hereafter be
" committed, or rendered to, or charged in the
" custody of the marshall of the *Queen's Bench* for
" the time being, or to or in the prison of the *Fleet*,
" either in execution, or upon mesne process, or
" upon any contempt in not performing such or-
" der or decree by any of her majesty's courts at
" *Westminster*, and such person or persons shall, at
" any time after such commitment, render, charge,
" or being in execution, and before he, she or they
" shall have made payment or satisfaction to the
" respective plaintiff or plaintiffs, creditor or cre-
" ditors, or shall have cleared him, her or them-
" selves of such contempts, as he, she or they were,
" or shall be charged with at the time of such their
" commitment, render, charge, or being in ex-
" ecution as aforesaid, make any escape from the
" custody of the marshall of the *Queen's Bench*, for
" the time being, or from the prison of the said
" *Queen's Bench* or from the prison of the *Fleet*, or
" either of them, or shall go at large, at any time af-
" ter the three and twentieth day of *Jan.* 1702, it
" shall and may be lawful, upon oath thereof in writ-
" ing, to be made by one or more credible person or
" persons, before any one of the judges of that court
" where such action was entered, or judgment and
" execution were obtained, or where the party was
" so committed or charged, as aforesaid, to and for
" such judge, before whom such oath shall be
" made

made, as abovesaid, and such judge is hereby
 authorized and required, from time to time, to
 grant unto any person whatsoever, who shall de-
 mand the same, one or more warrant or war-
 rants under his hand and seal, therein reciting the
 action or actions, execution or executions, con-
 tempt or contempts, with which such person or
 persons so escaping, or going at large, stood
 charged, or were committed at the suit of any
 person or persons on whose behalf such warrant
 or warrants shall be demanded at the time of
 such escape, or going at large, (which said war-
 rant or warrants shall be in force in all places
 whatsoever, within the kingdom of *England*, do-
 minion of *Wales* and town of *Berwick* upon
Tweed) directed to all sheriffs, mayors, bailiffs,
 constables, head-boroughs and tything-men,
 therein and thereby commanding them, and
 every of them, in their respective counties, cities,
 towns, and precincts, to seize and retake such per-
 son or persons so escaped or going at large, and
 such person or persons so retaken upon such war-
 rant forthwith to convey and commit to the com-
 mon gaol of such county, where such person or per-
 sons so escaped, or going at large, shall be re-
 taken, there to remain without bail or mainprize,
 or being thence upon any account whatsoever
 delivered or removed, until he, she, or they, shall
 have made full payment or satisfaction to the re-
 spective plaintiff or plaintiffs, creditor or credi-
 tors, in such action or actions, execution or exe-
 cutions named, or until the judgment or judg-
 ments, on which such execution or executions
 was or were sued out against such person or per-
 sons, shall be reversed or discharged by due course
 of law, or until judgment in such action or actions
 be given for such person or persons so committed,
 as aforesaid, or until the said contempt or con-
 tempts, for which such person or persons were or
 shall be committed, be cleared and discharged;
 except such person or persons be charged with

Directed to all
 sheriffs, mayors,
 &c. to seize and
 retake him.

Who shall con-
 vey and commit
 to the county
 gaol, where ta-
 ken, there to re-
 main &c.

Exception.

“ treason

Every mayor, &c. after delivery of prisoner, shall take a receipt from sheriff.

Sheriff to make return of warrant, &c.

If a prisoner in execution in K. B. be turned over to the Fleet, a judge of K. B. or C. P. may grant warrant. May be taken on a Sunday.

If not taken by lawful authority, shall not be committed.

If he escapes, and returns, and commits a second escape, cannot be taken for the first.

“ *treason or felony, or any other crime, matter or cause,*
 “ for, and on the behalf of the queen’s majesty,
 “ her heirs and successors ; and if he or she, for any
 “ such cause, on behalf of the queen, her heirs
 “ and successors, be removed to any other gaol or
 “ prison, he or she shall be in the custody of
 “ such gaol, charged with all the causes with which
 “ he or she is, or shall be charged in the gaol from
 “ whence he or she shall be removed ; And every
 “ mayor, or other officer, as aforesaid, after delivery
 “ of such prisoner so retaken, together with such
 “ warrant to the sheriff, shall take a note in writ-
 “ ing from such sheriff, testifying the receipt of
 “ such prisoner, which said sheriff, is hereby re-
 “ quired to receive such prisoner, and give such
 “ note. And every such sheriff as aforesaid,
 “ after the execution of such warrant, shall forth-
 “ with make a return thereof to the court where
 “ the action shall be depending, or judgment,
 “ order or decree, had, or obtained ; which shall
 “ be entered and filed upon record.”

If a prisoner in execution in K. B. be turned over to the Fleet, and escape, a judge of the king’s bench or common pleas may grant an escape warrant. 8 *Mod.* 240. And he cannot come out on a day rule. 6 *Mod.* 63. He may be taken on a Sunday. 6 *Mod.* 95. 2 *Salk.* 626. 2 *Lord Ray.* 1028. *Str.* 387. But cannot be brought before a judge by a day rule as another prisoner may, to shew cause of action against another. *Mod. Cas.* 63.

But if the party be not taken by lawful authority upon an escape warrant ; if this appears upon the return of the warrant, he shall not be committed to the county gaol, but to the former prison ; as if brought, not by a constable or other officer, but by persons not known. *Mod. Cas.* 154.

If a man escape, and returns again, and then commits a second escape, he cannot be taken up for the first escape, it being purged by his return. *Str.* 423.

So,

So, if he be discharged by agreement, after commitment upon an escape warrant, he shall not be afterwards retaken. *Mod. Caf. 254.* If discharged by agreement.

If the defendant is intitled to his discharge at the time of his escape, and would be intitled to it as soon as taken on the escape warrant, the court will supersede the warrant. *Str. 401.* If prisoner is intitled to his discharge.

A man taken upon an escape warrant of a judge, after his patent is determined, shall be discharged. *Lord Ray. 1513.* If judges patent is determined.

If a prisoner escapes, and plaintiff sends an order for his discharge, the gaoler cannot retake him for his fees. *Str. 909.* Cannot be retaken for fees.

If the prisoner escape by negligence of the sheriff, the sheriff may retake him, and he shall not have an *audita querela*. *3 Co. 32. b. 1 Sid. 330. Mod. 660.* If prisoner escapes by negligence, may retake.

Or he may have an action on the case against the prisoner for his escape, whereby he becomes subject to the action of the party. *Cro. Eliz. 53. 237. 1 Lev. 237. Lut. 64. Mod. 660.* And this before an action or recovery against the sheriff, as well as after. *Mod. 660. Godb. 125. Cro. Eliz. 53.* Or may have an action.

But if he escapes voluntarily, he cannot be retaken. *Barnes 373.* by the sheriff nor plaintiff. *Show. 174.* But if voluntary.

What shall not be an Escape.

IF the party was never in custody; as if the old sheriff does not deliver him over upon such execution. *3 Co. 72. 2 Lev. 54.* If a writ was tested in *Trinity* term, and returnable in *Hilary*, for not being returnable in the next term, it is out of court. *1 Salk. 273.* If he goes out of prison by reason of a sudden fire in the gaol, *1 Roll. 808. b. 7.* or the gaol be broke by the king's enemies. *Bro. Escape, 10. 1 Roll. 808. l. 5.* If rescued on mesne process, before he was in gaol. *1 Roll. 807. l. 35. 2 Cro. 419. 2 Lev. 144. 1 Roll. 389.* Though the rescous be What no escape.

be not returned, 2 *Lev.* 144. or if it be, 1 *Roll.* 440. So, if the defendant be retaken on fresh suit, before action commenced for the escape, 1 *Roll.* 808. l. 52. 3 *Cro.* 52. *Goob.* 404.

Though the fresh suit was not begun till a day and night after the escape. 1 *Roll.* 809. l. 10. Nor though he did not retake him till he fled into another county, 3 *Co.* 52. *Bro. Escapes* 54. Though he was out of sight. 3 *Co.* 52.

If sheriff bring one by hab. corp. no escape.

Of the preceding or succeeding sheriff. Prisoners omitted to be turned over to new sheriff, will be deemed an escape.

If a sheriff in a *habeas corpus*, brings his prisoner to *Westminster*; though he goes out of the direct way, no escape. 3 *Co.* 44. *Mod.* 299.

Where a new sheriff is appointed, his predecessor ought to deliver over by indenture all the prisoners in his custody, charged with their respective executions; for the prisoners, until they are turned over to the new sheriff, remain in the custody of the old sheriff; and if he omits to deliver them over, every omission will be deemed an escape, wherewith he will be chargeable. *Hob.* 266. 2 *Roll. Abr.* 457. *Cro. Eliz.* 365. *Bulst.* 70. 2 *Leon.* 54. 4 *Co.* 72.

Gaoler suffers a voluntary escape in A. who comes back to the prison, and escapes again in the time of a succeeding gaoler, he is chargeable.

J. S. being in execution in the *Fleet*, was suffered to make a voluntary escape, after which he returned again to the *Fleet*; and the defendant being made warden in the place of the former warden, J. S. was turned over with the other prisoners, and afterwards suffered to escape; and the question was, whether the voluntary escape suffered by the former warden did not so entirely discharge the execution, that the prisoner could not be retaken, nor judged in execution by law, even though he should yield himself to it; and it was held, that it did not, and that the succeeding warden should be chargeable with the escape suffered in his time. 2 *Lev.* 109. *Lenthal & Lenthal*, adjudged. 3 *Keb.* 487. *S. C. Vent.* 269. *Jamut & Pierce, S. P.* adjudged.

One voluntarily suffered to escape, voluntarily returned, and being

So in the case of one *Grant*, who being in the custody of the former marshall, was suffered by him voluntarily to escape, after which he returned

voluntarily

voluntarily to prison, and being found in prison, the succeeding marshal detained him; and in an action of false imprisonment brought by him, the court held that he might, and that if he had suffered him to go at large, it would be an escape. 6 Mod. 183. *Grant v. Southers*. Stra. 423.

detained, brought an action, held lawful.

Remedy for an Escape.

AT common law, the party plaintiff had no remedy against the sheriff for an escape, whether upon *mesne process*, or in *execution*, but by special action on the case. 2 Inst. 382. *Show*. 176. 2 Saund. 34. *Hard*. 30.

At common law, plaintiff had no remedy for an escape, unless by action on the case.

But now by the equitable construction of stat. 13 Ed. 1. action of debt is given against sheriffs, and by 1 Rich. 2. c. 12. against the warden of the Fleet for escapes in execution. Being founded in *maleficio*, is not within the statute of limitations, Saund. 34. Sid. 305. Lev. 191. and the statute of Rich. 2. extends to all gaolers and keepers of prisons, though *infants*, or *feme covert*s. 2 Inst. 382. And the plaintiff has his election to maintain debt or case, for an escape in execution, Cro. Jac. 285. 2 Bulst. 321. Cro. Eliz. 767. Nor is it local, and therefore, if one escapes out of the *marshalsea*, which is in Surry, the action against the marshal may be laid in *Middlesex*. Sid. 364. 1 Jon. 144.

But now may have debt against the sheriff.

It is not necessary to set forth all the formalities required by law in other cases, Cro. Eliz. 877. 2 Show. 424.

He may have debt on case for escape in execution. Not local action.

If a prisoner in custody on a *capias utlagatum*, is suffered to escape, the plaintiff may either maintain an action *qui tam* against the sheriff, or debt in his own right. Cro. Jac. 361. 533. 619. Cro. Eliz. 877.

Not to set forth all formalities required by law, &c.

If on a cap. utlag. may maintain action *qui tam*, &c.

It is now usual on *mesne process*, to declare, in case, on execution, in debt.

Usual way of declaring.

O

In

In civil actions, sheriff answerable for the escape of his office.

But where one is gaoler of freehold, he is answerable, and not the sheriff.

Office of marshal and warden, shall be executed by themselves, &c. and they shall be answerable.

If bailiff of a liberty takes defendant, and he escapes, bailiff liable.

If two sheriffs, action against both, one dies, no abatement, but may go on against survivor.

Gaoler in fee.

In civil actions, the sheriff is to answer for the escape of his *bailiff or gaoler*, so of his under-sheriff if the prisoner be taken. *Dalt.* 484.

Also, where one has the custody of a gaol of freehold or inheritance, and commits to another person who is insufficient; the *superior* is *answerable* for all *escapes* suffered by his *inferior*; but if the *inferior* be *sufficient*, the action should be brought against him, and not against the *superior*. 9 Co. 98. 2 Jon. 60. 2 Lev. 158. 1 Vent. 314. 4 Rep. 98. 2 Mod. 119.

By statute 8 & 9 W. 3. c. 27. s. 11. It is enacted, "that the offices of the marshal of the King's Bench prison, and warden of the Fleet, shall be executed by the several persons to whom the inheritance of the prisons, prison houses, &c. of the said prisons, or either of them shall then belong respectively, in his or their respective proper persons, &c. or their sufficient deputies, and for all forfeitures, escapes, and other misdemeanors in their offices by such deputies permitted, &c. the said person in whom the aforesaid inheritances respectively are, shall be answerable."

If a writ comes to the sheriff, and he makes out his mandate to the bailiff of a liberty, who takes the party, and after suffers him to escape, an action lies against the bailiff of the franchise, and not against the sheriff. *Roll. Abr.* 98, 99. *Noy.* 27.

If there are two sheriffs of the same place, and an action of escape is brought against them both, if one of them dies, yet the writ shall not abate, for it being in nature of a trespass, and merely personal, the party can only have remedy against the survivor. *Cro. Eliz.* 625. But the death should be suggested. 8 & 9 W. 3. c. 11. s. 7.

If he who has the custody of the gaol in fee, substitutes another for life, or at will, the action shall be against him, for he has the actual possession of the office. 9 Co. 98. a.

So, if an escape be out of the custody of the Mayor, &c. mayor or bailiffs of a city, town, &c. which has a gaol, the action shall be against them, and not against the sheriff. 1 Roll. 99. l. 15.

So against the bailiff of a franchise, if the escape be by him. 1 Roll. 95. l. 45. Bailiff.

So it shall be against both the sheriffs of London, if the escape be after an arrest upon a plaint in the compter of one of them, Carth. 148. or against the surviving sheriff of London where one dies. Cro. Eliz. 625. Sheriff of London.

If those deputies, who are made by such persons, who have a freehold and inheritance in the gaol, are insufficient to answer the action brought against them for escapes, viz. The sheriffs of London, then the mayor and commonalty, who have the office in fee, are liable. 2 Inst. 382. Who are liable, if the deputies are insufficient.

And so, if a man who has the custody of a gaol in fee, grants it for three lives; he is the superior, and the grantee, the inferior. 2 Jon. 61. 2 Lev. 159. 9 Co. 98. 1 Vent. 314. Gaoler in fee grants for three lives, he is superior.

So the dean and chapter of Westminster are the superior, and the bailiff the inferior. 2 Lev. 159. So is the dean and chapter of Westminster.

So the lord of a franchise, who has a gaoler, is the superior, and shall answer for his gaoler. Sav. 11. 15. But there cannot be two superiors within the statute. 2 Inst. 382.

But debt does not lie against the superior upon a general declaration for an escape; but he ought to be specially charged for the insufficiency of the inferior. 2 Lev. 160. Not against superior on general declaration.

If a man has the custody of a gaol in fee in reversion, after a grant thereof for life, rendering rent, which was not made by him, the reversioner is not superior, 2 Jon. 61, for the superior is not such in respect of the rent, or the reversion; but in regard, that the inferior officer derives his estate from him. In reversion.

If proceedings are against the marshal or warden for an escape, a bill must be filed against them in their respective courts; but if a sheriff is sued, A bill must be filed against marshal, &c.

process must be directed to the coroner; if against the late sheriff, it is to be directed to the present sheriff.

Sheriff's Defence.

If the prison takes fire, sheriff excused.

IF the prison takes fire, by means whereof the prisoners escape, this shall excuse the sheriff, and he may plead it. 3 E. 6. 66. 15. Roll. Abr. 808.

So if it be broke by the king's enemies.

So, if the prison is broke by the king's enemies, this shall excuse the sheriff, for he can have no remedy over against them. 4 Co. 84. Roll. Abr. 808.

But if by rebels, &c. the king's subjects.

But if the prison was broke by rebels and traitors, the king's subjects, this shall not excuse him, for he may have his remedy over against those. *Ibid.*

Fresh pursuit and retaken before action brought, excuses the sheriff.

If a prisoner in execution escapes without the assent of the sheriff, &c. and he make fresh pursuit and retake him *before any action brought against him*, this shall excuse the sheriff. Cro. Jac. 657. Jon. 144. Roll. Abr. 808.

But not after.

But if he retake him *after the action commenced against him*, this shall not excuse him; nor can it be pleaded to an action that was well attached before. Roll. Abr. 808, 809. Jon. 145. Cro. Car. 657.

If fresh suit is made, and sheriff retakes before action.

So if a prisoner escape, and several days after, but as soon as the sheriff has notice of it, he makes fresh suit, and retakes him *before any action brought*, this shall excuse him. Roll. Abr. 809.

Plea.

So the sheriff may plead, that the prisoner escaped the 16th day of *December*, and that he made fresh suit, and retook him the 17th day of *December*, and retained him in execution; for it is sufficient, if he did all he could, though he lost sight of him in the night or otherwise. Roll. Abr. 809. Dalt. Sheriff, 562.

That

“ That no retaking on fresh pursuit shall be
 “ given in evidence on the trial of any issue in an
 “ action of escape against the marshal or warden,
 “ or their respective deputy or deputies, or against
 “ any other keeper or keepers of any other prison
 “ or prisons, unless the same be specially pleaded ;
 “ nor shall any special plea be taken, received or
 “ allowed, unless oath be first made in writing by
 “ the marshal or warden, or their respective deputy
 “ or deputies, or by such other keeper or keepers
 “ of any other prison or prisons against whom such
 “ action shall be brought, and filed in the proper
 “ office of the respective courts, that the prisoner
 “ for whose escape such action is brought, did,
 “ without his consent, privity or knowledge,
 “ make such escape ; and if such affidavit shall at
 “ any time afterwards appear to be false, and the
 “ marshal or warden, or other keeper or keepers
 “ of any other prison or prisons, shall be convict-
 “ ed thereof by due course of law, such marshal
 “ or warden, or other keeper or keepers of any
 “ other prison or prisons, shall forfeit the sum of
 “ 500 l.” 8 & 9 W. 3. c. 26. s. 6.

How to plead a
 fresh pursuit and
 recaption.

Affidavit to be
 annexed to the
 plea.

If a man is in custody of the sheriff, and another writ comes against him, and he refuses to take it, it is an escape. *Dalt.* 114.

If a writ comes
 against one al-
 ready in custody,
 and the sheriff
 refuses to take it,
 it is an escape.

When a prisoner tortiously escapes from the custody of the gaoler, he may be retaken ; and the sheriff may pursue into that or any other county ; and if he retakes the prisoner on fresh pursuit *before action brought*, it shall excuse the sheriff, for there the prisoner shall be said to be in execution still. 3 Rep. 44. Gro. Jac. 657. 1 Jon. 144. 1 Roll. Abr. 808. And where the sheriff is to answer the debt and damages for such escape, he shall have his counter-remedy against the party escaping ; and may take him at any time and place, and imprison him until he hath satisfied the sheriff as much as he hath paid to the plaintiff, or he may bring case against the prisoner, and so relieve himself. 5 Rep. 54. Cro. Eliz. 393.

When a prisoner
 tortiously escapes
 he may be re-
 taken in any
 county on fresh
 pursuit, before
 action brought,
 and it shall excuse
 the sheriff.

And where she-
 riff is to answer
 the debt, what
 he may do.

In Criminal Matters.

Escape by the party himself.

AS all persons are bound to submit themselves to the judgment of the law, and to be ready to be justified by it; whoever in any case refuses to undergo that imprisonment which the law thinks fit to put upon him, and frees himself from it by any artifice, before such time as he is delivered by due course of law, is guilty of an high contempt, punishable with fine and imprisonment. 2 *Haw.* 122.

Escape by a private person.

That wherever any person hath another lawfully in his custody, whether upon an arrest made by himself or another, he is guilty of an escape, if he suffer him to go at large, before he hath discharged himself of him, by delivering him over to some other, who by law ought to have the custody of him. 2 *Haw.* 138. And the law is generally the same, in relation to *escapes* suffered by *private persons*, as by *officers*. *Ibid.*

Escape by an officer, there must be a previous arrest.

To make it an escape, there must be an actual arrest; and therefore if an officer having a warrant to arrest a man, see him shut up in a house, and challenge him as his prisoner, but never actually have him in his custody, and the party get free, the officer cannot be charged with an escape. 2 *Haw.* 129.

And justifiable, if for a supposed crime where none committed and party never indicted, nor appealed, or an irregular mittimus, if prisoner escapes, the officer is not guilty of an escape. And for a criminal offence. And detained only for fees,

Such arrest also must be justifiable; for if it be either for a supposed crime, where no such was committed, and the party never indicted nor appealed, or for such a slight suspicion of an actual crime, and by such an irregular *mittimus*, as will neither justify the arrest nor imprisonment, the officer is not guilty of an escape, by suffering the prisoner to go at large. *Ibid.* 129.

And as the imprisonment must be justifiable, so it must also be for a criminal offence. *Ibid.*

Also if a prisoner be acquitted and detained only for his fees, it will not be criminal to suffer him to escape,

escape, tho' the judgment were, that he be discharged *paying his fees*, so that they be paid, the first imprisonment continuing lawful as before; for inasmuch as he is detained, not as a criminal, but only as a debtor, his escape cannot be more criminal than that of any other debtor: yet if a person convicted of a crime, be condemned to imprisonment for a certain time, and also *till he pay his fees*, and he escape after such a time is elapsed, without paying them, perhaps such escape may be criminal, for that it was part of the punishment, that the imprisonment be continued till the fees should be paid; but it seems, that this is to be intended where the fees are due to *others*, as well as to the *gaoler*, for otherwise the *gaoler* will be the only sufferer by the escape, and it will be harsh to punish him for suffering an injury to himself only, in the non-payment of a debt in his power to release. *Ibid.* 129, 130.

not criminal to suffer escape.

To suffer a prisoner to have greater liberty, than the law allows, is an escape. If a *gaoler* or other officer, shall license his prisoner to go abroad for a time, and to come again, this is an escape, tho' he return again. *Dalt. c.* 159.

Too much liberty.

If the *gaoler* so closely pursues the prisoner who flies from him, that he re-takes him, without losing sight of him, the law looks on the prisoner so far in his power all the time, as not to adjudge such a flight to amount at all to an escape; but if the *gaoler* once lose sight of the prisoner, and afterwards retake him, he seems to be guilty in strictness, of an escape. And if he kill him in the pursuit, he is in like manner, guilty of an escape, tho' he never lost sight of him, and could not otherwise take him. *2 Haw.* 130.

Losing sight of prisoner, an escape.

And if he kill him in the pursuit.

There can be no doubt, but that wherever an officer, who hath the custody of a prisoner, charged with, and guilty of a capital offence, doth knowingly give him his liberty, with an intent to save him, either from his trial or execution, he is guilty of a *voluntary escape*, and thereby involved

Voluntary and negligent escapes.

involved in the guilt of the crime of which the prisoner was guilty and stood charged with. *Vide 2 Inst.* 592. And it seems to be the opinion of Sir *Matthew Hale*, that in some cases an officer may be adjudged guilty of such escape, who had not such intent, but only means to give his prisoner that liberty which by the law he hath no colour of right to give him. *2 Haw.* 130.

Indictment.

It seems clear, that every indictment for an escape whether negligent or voluntary, must expressly shew, that the prisoner was actually in the defendant's custody for such a crime: and that he went at large: and if for a voluntary escape, that the defendant feloniously and voluntarily suffered him to go at large: and must set forth, not the felony in general, but the particular kind of felony: but it seems questionable, whether such certainty, as to the nature of the crime, be necessary in an indictment for a negligent escape; for that it is not material in this case, whether the person who escaped were guilty or not. *Haw.* 133. 229.

The gaoler on trial, not producing the prisoner, a conviction.

If the prisoner be of record in a court, and the gaoler being called, cannot give an account where he is, this is a conviction of an escape; but it seems not a conviction of a voluntary escape, unless the gaoler confesseth it: and the gaoler may be fined in such a case, but not convicted of felony, without indictment or presentment. *1 H. H. P. C.* 599. 603.

Felony to be tried before the escape.

That the keeper who voluntarily suffers the escape, cannot be arraigned for such an escape as for felony, until the principal be attainted, for that the felony of the prisoner shall not be tried between the king and the keeper, because the prisoner is a stranger thereto; yet he may be indicted and tried for it as a misprision before the attainder of the principal. *2 Haw.* 135. *2 Inst.* 591, 592.

Negligent escape.

Whoever *de facto* occupies the office of gaoler, is liable to answer such an escape; and that it is no way material whether his title to the office be legal or not. *2 Hawk. P. C.* 135. A sheriff is as much

much liable to answer for an escape suffered by his bailiff, as if he had actually suffered it himself, and the court may charge either the sheriff or bailiff for such an escape; and if a deputy gaoler be not sufficient to answer a negligent escape, his principal must answer for him: but if the gaoler who suffers an escape, have an estate for life, or years in the office, it is not agreed how far he in reversion is liable to be punished. 2 *Hawk. P. C.* 135, 136.

1. If a felon escapes before arrest, it is not punishable in him as felony; but for the flight he forfeits his goods, when presented. *Hale's Pl.* 111.

Punishment of escape, before arrest.

2. If a private person arrest a felon, and he escape by force from him, the township shall be amerced, but it seems, it excuseth the party, because he cannot raise power to assist him; but if a constable or other officer hath the custody of a prisoner, bringing him to the gaol, it seems that a simple escape by the rescue of the prisoner himself, doth not wholly excuse him, because he may take sufficient strength to his assistance. 1 *H. H.* 601.

Of escape by a private person.

3. Wherever a person is found guilty upon an indictment or presentment of a negligent escape of a criminal actually in his custody, he is punishable by fine and imprisonment, according to the quality of the offence. 2 *Haw.* 136. 139. 1 *H. H.* 600. 604.

Of a negligent escape.

And it seems to be the better opinion, that the sheriff is as much liable to answer for a negligent escape suffered by his bailiff, as if he had actually suffered it himself, and the court may charge either the sheriff or bailiff for such an escape; and if a deputy gaoler be not sufficient to answer a negligent escape, his principal must answer for him. 2 *Haw.* 135.

Better opinion.

Note. Mr. *Hawkins*, although he is one of the most accurate of all writers, yet has inserted in this place certain penalties for escapes, which were expired above 200 years before. 2 *Hawk.* 137.

If a prisoner for felony break the gaol, this seems to be a negligent escape in the gaoler, because

cause there wanted either that due strength in the gaol, that should have secured him, or that due vigilance in the gaoler or his officers to have prevented it; and therefore it is lawful in the gaoler to hamper them with irons to prevent their escape; for if gaolers might not be punished for this as a negligent escape, they would be careless either to secure their prisoners, or to take them that escape. 1 *H. H.* 601.

Voluntary escape.

4. It seems to be generally agreed, that a voluntary escape suffered by an officer, amounts to the same kind of crime, and is punishable in the same degree, as the offence of which the party was guilty, and for which he was in custody, whether it be treason, felony, or trespass. 2 *Haw.* 134.

If act done is not felony.

But yet a voluntary escape is no felony, if the act done were not felony at the time of the escape made, as in case of a mortal wound given and the party dying not till after the escape; but the officer may be fined to the value of his goods. *Dalt.*

Also a voluntary escape suffered by one who wrongfully takes upon him the keeping of a gaol, seems to be punishable in the same manner, as if he was never so rightfully intitled to such custody; for that the crime is in both cases of the same ill consequence to the public: and there seems to be no reason that a wrongful officer should have more favour than a rightful, and that for no other reason but because he is a wrongful one. 2 *Haw.* 134.

Principal only fineable.

But it seemeth to be clear, that no one is punishable as for felony, for the voluntary escape of a felon, but the person only who is actually guilty of it; and therefore that the principal gaoler is only fineable for a voluntary escape suffered by his deputy; for that no one shall suffer capitally for the crime of another. 2 *Haw.* 135.

Felony in gaoler but not his principal.

And therefore, altho' in all civil causes, the sheriff is to be responsible, or the gaoler, at election, yet if the gaoler do voluntarily suffer a felon in his custody

custody to escape; this, inasmuch as it reacheth to life, is felony only in the gaoler, that was immediately trusted with the custody, and not in the sheriff. 1 H. H. 597.

For the escape must be voluntarily permitted in him that permitted it, which could not be in the high sheriff, tho' it were such in the gaoler, for he was not privy to it, and therefore could not do it feloniously; but it was a negligent escape in him, in trusting such a person with the custody of his prisoners, that would be false to his trust, and therefore the sheriffs shall pay, but not corporally suffer for the miscarriage of his gaoler. 1 H. H. 597, 598.

But although the felony for which a man is committed be not within clergy; yet the person who voluntarily suffers him to escape, shall have the benefit of clergy. 1 H. H. 599.

By the 16 Geo. 2. c. 31. If any person shall assist any prisoner to attempt his escape from any gaol, though no escape be actually made, if such prisoner was then attainted or convicted of treason or felony (except petty larceny) or lawfully committed, or detained in any gaol, for treason or felony (except petty larceny) expressed in the warrant of commitment; he shall be guilty of felony, and be transported for seven years: and if such prisoner was then convicted of, or detained in gaol for petty larceny, or any other crime not being treason or felony, expressed in the warrant of commitment, or was then in gaol for debt amounting to 100l. he shall be guilty of a misdemeanor, and be liable to fine and imprisonment.

And if any person shall convey, or cause to be conveyed, any disguise, instrument or arms, to any prisoner in gaol, or to any other person there for his use, without consent of the keeper; such person, altho' no escape or attempt be actually made, shall be deemed to have delivered such disguise, instrument or arms, with an intent to assist such prisoner to escape or attempt to escape; and if such prisoner

Escape must be voluntary in him who permitted it.

Clergy.

Where a person assisting a prisoner to escape, shall be deemed guilty of felony.

And where deemed a misdemeanor.

Any person conveying any disguise, instrument or arms, to help an escape without the knowledge of the keeper be attainted of treason or felony; the offender shall

be deemed guilty of felony and be transported.

But if convicted or detained for petty larceny or for debt amounting to 100*l*. guilty of a misdemeanor.

To assist any person to escape from a constable being charged with treason or felony, or from any boat, &c. carrying felons for transportation, the offender deemed guilty of felony, and be transported.

In criminal cases, town amerced.

A marshal permitting an escape by bail, imprisoned.

A fine for negligent escape of a person indicted for high treason, &c.

If gaoler not sufficient.

prisoner then was attainted or convicted of treason or felony (except petty larceny), or lawfully detained in gaol for treason or felony (except petty larceny) expressed in the warrant of commitment, he shall be guilty of felony and be transported for seven years; but if the prisoner was then convicted or detained for petty larceny, or any other crime not being treason or felony, expressed in the warrant of commitment, or for debt amounting to 100*l*. he shall be guilty of a misdemeanor, and liable to fine and imprisonment. *Ibid.*

And if any person shall assist any prisoner to attempt to escape from any constable, or other person, who shall have the lawful charge of him, in order to carry him to gaol, by virtue of a warrant of commitment of treason or felony, (except petty larceny,) or if any person shall assist any felon to attempt his escape from on board any boat or vessel, carrying felons for transportation, or from the contractor for the transportation of such felons, or his agents, he shall be guilty of felony, and be transported for seven years. Offence to be prosecuted within a year. *Ibid.*

By the st. *Winton*. 13 *Ed.* 1. c. 4. If murder or homicide be done in a walled town, &c. and the offender escapes, the town shall be amerced, 7 *Co.* 7. a. So London was. *Cro. Car.* 252.

By st. 5 *Ed.* 3. c. 8. A marshal who permits the escape of *indictées* or *appellees* in his custody, by bail, or without bail, shall be imprisoned for half a year, and ransomed at the will of the king.

By the stat. 19 *H.* 7. c. 10. A fine for a negligent escape of any indicted for *high treason*, shall be *one hundred marks* at least; if committed for suspicion of *high treason* *forty pound*; if indicted for murder, or petit treason *twenty pound*; if for suspicion of these, or indicted for other felony *ten pound*; if not indicted *five pound*. And if the gaoler be not sufficient, the sheriff shall answer for his neglect. *Hawk.* 113.

Sheriff's

Sheriff's Duty.

REPLEVIN, is a re-delivering to the owner, by the sheriff, his cattle or goods distrained upon any cause, upon surety that he will pursue the action against him that distrained; and if he pursue it not, or if it be adjudged against him, then he who took the distress, shall have it again, and for that purpose may have a writ *de retorno habenda*. *Co. Lit. 145. b.*

What a replevin lies for.

Replegiari is compounded of *re* and *plegiare*, as much as to say, to re-deliver upon pledges or sureties; and in the *stat. of Marlbridge*, *deliberare*, is used for *replegiari*. *Co. Litt. 145. b.*

From whence derived.

It does not lie of hounds, hawks, monkeys, apes, thrushes, popinjays, &c. which are *feræ naturæ*, for the property is not properly known, and yet trespass lies thereof; and so of a mastiff. *Br. Property. pl. 44. 12 H. 8. 4 Br. Replevin. 64. 12. H. 8. 3. nor of conies. God. 124. pl. 144. nor of charters. Br. Grant. pl. 84. 4 H. 7. 10. for they are inheritances and belong to the heir.*

For what it does not lie.

But it lies of such things in which he has a qualified property, though he has not therein an absolute property, as of things wild by nature, which are made tame, or are reclaimed, so long as they continue in that condition, they belong to the person who has the possession of them. *2 Roll. Abrid. 430. Godb. 124. It lies of a swarm of bees. F. N. B. 68. of iron belonging to a mill, Ibid. 68. of a foal, calf, &c. 1. Sid. 82. Bro. 41. For a ship, so of the sails. Ray. 232. Moor. 110.]*

For what it does lie.

If the beasts of divers several men be taken, they cannot join in a replevin, but every one must have a several replevin. *Co. Litt. 145. b.*

When to have a separate replevin.

Although one distress is put into several pounds, yet one replevin shall serve, otherwise if it be in
divers

When one replevin does,

divers counties, or several franchises, where there ought to be several replevins. *Noy.* 52.

It lies of all goods, &c.

Replevin lies of all goods and chattels, whether they be live cattle or dead chattels.. *F. N. B.* 68. *D.*

But he must have property in him.

He who brings a replevin, ought to have the property of the cattle or goods in him. *Co. Litt.* 145. *b.* but a special property is sufficient. *Ibid.* As if goods be in his custody as a pledge, or for the manuring of his land. *Ibid.* So a lord may have a replevin for the goods of his villein; for his action of replevin amounts to a claim, and vests the property in him. *Ibid.* *F. N. B.* 69. *F.* A husband for the goods of his wife *dum sola.* *Ibid.* *K.* An executor or administrator for the goods of his testator. *1 Sid.* 81.

It lies against him who takes the goods.

And replevin lies against him who takes the goods, and also against him who commands the taking. *2 Rol.* 431. *l.* 5. or against both. *Ibid.* So it lies against him who takes damage feasant, if he detains after amends tendered. *F. N. B.* 19. *G.*

But not if taken beyond sea.

Replevin does not lie against him, who takes goods beyond sea, though he afterwards import the goods hither. *Shew.* 91. Nor does it lie for goods

Nor in execution.

taken in execution, nor for goods seized for a debt due to the king, without his command or the barons of the exchequer. *Mod.* 672. So it does not lie

Nor if seized by a warrant from a justice of peace.

for goods seized by a warrant from a justice of peace, upon conviction for destruction of game. *2 Mod.* 208. 9. Nor for goods distrained on a

If under-sheriff grants such a replevin liable to be attached.

conviction (for deer stealing.). *Str.* 1184. And if the under-sheriff grants it, an attachment shall go against him. *Ibid.* Nor for goods distrained for a fine imposed on an officer by commissioners of land tax. *Bunb.* 14.

The mode of contesting the regularity of a distress is by replevin.

The regular way of contesting a distress taken wrongfully, and without sufficient cause, is by action of *replevin*, and formerly the party had no other process by the old common law, than by a writ of *replevin*, *replegiare facias* which is issued out of chancery, commanding the sheriff to deliver the distress to the owner, and afterwards to do justice in

The old common law was by writ.

in respect of the matter in dispute, in his own county-court. But this being a tedious method of proceeding, the beasts or other goods were long detained from the owner, to his great loss and damage. For which reason the statute of *Marlbridge*, 52 H. 3. c. 21. directs, "that if the beasts of any person be taken, and wrongfully with-holden, the sheriff after complaint made to him thereof, may deliver them without let or gainsaying of him that took the beasts, if they were taken out of liberties; and if the beasts were taken within any liberties, and the bailiff of the liberty will not deliver them, then the sheriff for default of those bailiffs, shall cause them to be delivered."

But being too tedious.

The stat. directs the sheriff to deliver the distress taken without let or gainsaying.

By this statute, the sheriff upon a plaint made unto him without writ, may either by parole or precept, command his bailiff to deliver the beasts or goods, that is, to make replevin of them; and the sheriff may take a plaint out of the county-court, as it would be inconvenient, and against the scope of the statute, that the owner, for whose benefit the statute was made, should tarry for his beasts, until the next county-court, which is holden from month to month. And by this act, the sheriff may hold plea in the county-court or replevin by plaint, though the value be of 20l. or above.

Sheriff may deliver by parole or precept, the distress.

And may take a plaint for that purpose out of his county-court.

And for the greater ease of the parties, by stat. 1 Ph. & M. c. 12. it is provided, "That the sheriff shall make at least four deputies in each county, for the sole purpose of making replevins."

Sheriffs to make four deputies to take replevins.

When the sheriff makes replevins, he ought to take two kinds of pledges, 1st, That the party replevying will pursue his action against the distrainer, for which purpose he puts in *plegios de prosequendo*, pledges to prosecute. And 2d, That if the right be determined against him, he will return the distress again; for which purpose he is bound to find pledges to make return, if return shall be adjudged, *plegios de returno habendo*, &c.

He ought when he makes replevin, to take two kinds of pledges.

By

The statute directs pledges for pursuing the suit,

And return of the beasts.

In construction hereof, it has been resolved, that if he takes insufficient pledges, he shall answer.

Infants, &c. not to be taken.

Sheriffs, &c. having authority to grant replevins, shall for distress, if rent, take bond in their own name from the plaintiff, and two sureties, in double the value of the goods.

Conditioned for prosecuting the suit with effect, and for return of the goods if awarded.

And shall assign such bond without stamp, in presence of two witnesses.

By stat. *West.* 2. 13 *Ed.* 1. c. 2. " Sheriffs or bailiffs from thenceforth shall not only receive of the plaintiff pledges for the pursuing of the suit, before they make deliverance of the distress, but also for the return of the beasts, if return be awarded; and if any take pledges otherwise, he shall answer for the price of the beasts, and the lord that distrains, shall have his recovery by writ, that he shall restore to him so many beasts or cattle; and if the bailiff be not able to restore, his superior shall restore."

In the construction hereof, it has been resolved, That if the sheriff returns insufficient pledges, he shall answer according to the statute, for insufficient pledges, are no pledges in law; and such pledges must not only be sufficient in estate, viz. capable to answer in value, but likewise sufficient in law, and under no incapacity; and therefore, *infants, feme coverts, persons outlawed, &c.* are not to be taken as pledges, nor are all persons *politic, or bodies corporate.* *Co. Lit.* 145. 2 *Inst.* 340. 10 *Co.* 102.

And for the greater security of persons distraining for rent, by stat. 11 *Geo.* 2. c. 9. it is enacted, " That sheriffs, and other officers having authority of granting replevins, shall in every replevin of a distress for rent, take in their own names, from the plaintiff and two sureties, a bond in double the value of the goods distrained, (such value to be ascertained by the oath of one or more witnesses not interested, which oath the person granting such replevin is to administer,) and condition for prosecuting the suit with effect and without delay, and for returning the goods, in case a return shall be awarded, before any deliverance be made of the distress; and such sheriff or officer taking such bond, shall at the request and costs of the avowant or person making conuzance, assign such bond to the avowant, &c. by indorsing the same, and attesting it under his hand and seal in the presence of two witnesses, which may be done without any stamp; provided the assignment be stamped before

"fore any action brought thereon; and if the
"bond be forfeited, the avowant, &c. may bring
"an action thereupon in his own name; and the
"court may by rule, give such relief to the parties
"upon such bond, as may be agreeable to justice;
"and such rule shall have the effect of a defeaz-
"ance."

And if bond
forfeited, the
avowant, &c.
may bring an
action in his own
name, and court
may by rule,
give relief.

The sheriff is obliged to grant replevins in all
such cases, as they are allowed of by law; and the
officer who takes the goods by virtue of a replevin,
issuing for what cause soever, is not liable to an
action of trespass, unless the party in whose pos-
session the goods were, claims property in them.
And that in all cases of misbehaviour by the sheriff
or other officers in relation to replevins, they are
subject to the controul of the king's superior courts,
and punishable by attachment for such misbehavi-
our. *Carth. 381.*

Sheriff obliged to
grant replevins,
and officer who
takes the goods,
is not liable to
trespass, unless,
&c.

Misbehaviour by
sheriff, &c. sub-
ject to K. B.

As the end of all distresses is, to compel the
party distrained upon to satisfy the debt or duty
owing from him, this end is as well answered by
such sufficient sureties, as by retaining the very
distress, which might frequently occasion great
inconveniences to the owner; and that the law
never wantonly inflicts.

The end of dis-
tress, is to compel
a satisfaction.

Answered by
taking sufficient
pledges.

The sheriff, on receiving such security, is im-
mediately to make his precept, directed to his
officers, commanding them to replevy, and cause
to be delivered the cattle, goods or chattels, so
taken into the possession of the party so distrained
upon: And if the distress be conveyed into any
house, park, castle, or other place of strength;
and the party who distrains, refuses to deliver
them to be replevied, the sheriff may take the
posse comitatus, and on request and refusal, may
break open the same, and make deliverance.
Stat. Westm. 1. 3 Ed. 1. c. 17.

Sheriff receiving
security, is to
make precept to
his bailiff to de-
liver.

If distress con-
veyed into a
place of strength,
&c. and refusal
to deliver, he may
take posse comi-
tatus.

But, if the defendant in the replevin, claims a
property in them; the party replevying must sue
out a writ *de proprietate probanda*, in which the she-
riff is to try, by an inquest, in whom the property
P previous

If defendant
claims property,
the remedy.

previous to the distress subsisted. *Finch.* 316. The sheriff is to give notice of the time and place of executing this writ. *Dalt.* 274.

If distress be out of the county, how to proceed.

If the distress be carried out of the county, or be concealed, the sheriff may return, that the beasts, &c. are carried to a distance, to places to him unknown or eloigned; and therefore, the party replevying shall have a *capias in withernam*, or in *ueltitatio*; a term which signifies a second or reciprocal distress, 2 *Inst.* 141. in lieu of the first which was eloigned. It is a command to the sheriff to take other goods of the distrainer, in lieu of the distress formerly taken and eloigned, or withheld from the owner. *F. N. B.* 69, 70. So that here is now distress against distress; one being taken to answer the other, by way of reprisal, and as a punishment for the illegal behaviour of the original distrainer. For which reason, goods taken in *withernam*, cannot be replevied, until the original distress is forthcoming. *Ray.* 475.

Withernam, a command to take other goods, in lieu of those distrained.

Goods taken in withernam, cannot be replevied.

If shewn a stranger's goods, trespass lies, if he take them.

If the sheriff be shewn a stranger's goods, and he takes them, trespass lies. 2 *Roll. Abr.* 552. *Comb.* 596. were it not so, it would be in the power of the sheriff to strip a man's house of all his goods; but *Keilw.* 119 says, it lies more properly against the person who shews the goods.

Cannot break an inclosure, if there is an open gate.

He cannot break an inclosure and enter, where he may enter by the open gate. 20 *H.* 6. 28, 2 *Roll. Abr.* 552.

May return, that no person came to shew, &c.

He may return, that no person came to shew, &c. or a delivery. 1 *Lord Ray.* 613. 1 *Litt.* 581. but not that the defendant, *non cepit*, the cattle. *Ibid.*

If the freehold comes in question, the sheriff can proceed no further.

If the plaintiff in replevin proceeds before the sheriff in his county-court, if any thing touching the freehold comes in question, the sheriff can proceed no further, nor can any such proceeding be carried on in the hundred court or court baron. *Co. Lit.* 145. So where the king is party, or the taking is in right of the crown, the sheriff is to surcease. *Brow.* 33. Therefore, in these cases, the

the plaint must be removed into one of the courts above, by *recordari facias loquelam*; if a court of record, by *venidori*, &c. and it is said, that the writ of *recordari* must be openly read; and allowed in the same court, to the end that notice may be given thereof to the plaintiff in replevin, that he may appear at the day of the return thereof, and declare against the taker of his cattle, &c. otherwise, the taker will have a return thereof.

In these cases, removal must be by record, fac. loquel. and how the sheriff is to act.

Surry } At my county-court, held at, &c. the
to wit. } day of in the 26th year of
the reign of our sovereign lord *George* the Third,
by the grace of God of *Great Britain, France* and
Ireland, king, defender of the faith, &c. before
A. E. K. E. P. K. and *J. S.* suitors of the said
court, (amongst other things,) it is entered,
Surry, to wit, *G. A.* complains of *H. H.* of a
plea of taking and unjustly detaining his goods and
chattels, as well for prosecuting, as for returning
the same goods and chattels, if return thereof shall
be adjudged, are *H. G.* of, &c. plumber, and
R. H. of, &c. glazier.

Entry of the
plaint in replevin

Know all men by these presents; That we
G. A. of in the county of gent.
and *J. B.* of the same place, gent. are held, and
firmly bound to *G. M.* Esq; sheriff of the county
aforesaid, in the sum of 100 *l.* of lawful money of
Great Britain, to be paid by the said *G. A.* and
J. B. or their certain attorney, executors, admin-
istrators, or assigns, for which payment, to be
well and truly made, we bind ourselves, and each
of us bind himself, for the whole, and in gross,
our heirs, executors, and administrators, firmly
by these presents. Sealed with our seals. Dated
the day of 1786.

Bond in replevin

The condition of this obligation is such, that
if the above bounden *G. A.* do appear at my next
county-court, to be holden for the county of
at on the day of
next, and do prosecute there with effect his suit,
which he hath commenced against *H. H.* for the
P 2 taking,

Condition

taking, and unjustly detaining of two oxen, &c. (here set forth the goods distrained) the cattle, goods and chattels of him the said *G. A.* and to make return of the said cattle, goods and chattels, if return of the same shall be adjudged; that then this present obligation shall be void and of none effect.

Precept to deliver.

Surry } *G. M.* Esq; sheriff of the county afore-
to wit. } said, to the bailiff of the hundred of *K.*
in the said county, and to *John Doe* and *Richard Roe*, my bailiffs, and to every one of them, jointly and severally, greeting: Forasmuch, as *G. A.* hath found me sufficient security, as well for prosecution of his action against *H. H.* for unjustly taking and detaining his cattle, goods and chattels, and which the said *H. H.* takes, and unjustly detains as is alledged; as also for return thereof, if return thereof should be adjudged. Therefore, I command you, and every of you, jointly and severally, that upon the behalf of the said *G. A.* you replevy, and cause to be delivered to the aforesaid *G. A.* his said cattle, goods and chattels, and that the aforesaid *H. H.* give or cause to be given, sufficient pledges, or that he may be at the next county-court, to be held at *Guildford*, in and for the aforesaid county, to answer the aforesaid *G. A.* of a plea of taking, and unjustly detaining of his said cattle, goods and chattels, and in what manner you have executed this precept, certify to me at the said next county-court, to be held at the time and place aforesaid, under the peril incumbent. Given under the seal of my office, this 25th day of *September*, in the 26th year of the reign of our sovereign lord, &c. and in the year of our Lord 1786.

Summons to the defendant in replevin.

Surry, ss. By virtue of a warrant from the sheriff of the county of *Surry*, to me directed, I summon you to be and appear at the next county court to be held at *Guildford*, in and for the county aforesaid, to answer *G. A.* of a plea of taking
and

and unjustly detaining his cattle, goods and chattels.

Dated the day of

1786.

To Mr. C. D.

H. F. bailiff.

Know all men by these presents ; that I G. M. Esq. Sheriff of the county of *Surry* have at the request of the above named *H. H.* the avowant in this cause, assigned over unto him the said *H. H.* this *replevin* bond, pursuant to the act of parliament in that case made and provided. *In witness* whereof, I have hereunto set my hand and seal of office, this day of 1786.

Assignment of
replevin bond.

Sealed, &c.

Surry, *vs.* G. M. Esq; high-sheriff of the said county, to all and singular my bailiffs of the said county, greeting: Forasmuch as *W. B.* hath come before me, and found me sufficient security, as well to prosecute his complaint as to return his cattle, if return thereof shall be adjudged ; and therefore, by virtue of my office, I have often commanded you, and every of you, that you, or some one of you, shall cause to be *replevied* and delivered to the aforesaid *W. B.* his, &c. which *J. C.* took and unjustly detains, (as it is said) and you upon my several precepts of *replevin* to you directed as aforesaid, have certified that the cattle, &c. aforesaid, are eloigned to places to you unknown, so that you could not have the view of them : Therefore I now command you, and every of you, that you, or some one of you, take in *withernam* chattels to the value of the said cattle, &c. of the chattels of the said *J. C.* to be delivered to the said *W. B.* for his cattle aforesaid, taken and eloigned as aforesaid : And also that you put, by safe gages and pledges, the said *J. C.* so that he be and appear at my next county court at *D.* (on such a day) to answer to the said *W. B.* of the plea aforesaid ; and you, or one of you, is to return an answer to this my mandate at my said next county

A precept on a writ of *withernam*.

court. Given under the seal of my office, the
day of in the year, &c.

Return to a writ
of recordari fa-
cias loquelam.

By virtue of this writ to me directed, in my full
county, held at *P.* in the county of the
day of in the year of our Lord 1786,
I have caused the plaint to be recorded, which was
in my county, without the king's writ between the
parties within named, which record appears in
the schedule hereunto annexed: I have the said re-
cord before his majesty, from *Easter* day in one
month within mentioned, wheresoever his majesty
shall then be in *England*, under my seal and the
seals of *J. G. M. H. J. P.* and *S. W.* four lawful
knights of the said county who were present at the
said record; I have prefixed the same to the said
parties, that then they may be there ready to pro-
ceed in the said plaint as I am within commanded,
The answer of,

Then on a piece of parchment unstamped write
thus,

The plaint

Surry, ? At my county court, held at, &c. in
to wit, *S* the said county, the day of
in the 26th year of the reign of our sovereign lord
George the Third, by the grace of God of *Great*
Britain, France, and Ireland, king, defender of the
faith, &c. before *A. E. K. E. P. K.* and *J. S.* sui-
tors of the said court (amongst other things) it is
entered, *Middlesex* (*ss.*) *S. F.* complains of *J. M.*
of a plea of taking, and unjustly detaining his
goods and chattels, as well for prosecuting as for
returning the same goods and chattels, if return
thereof shall be adjudged, are *A. H.* of, &c. yeo-
man, and *T. H.* of, &c. barber,

Return to a writ
of Retorno ha-
bend, eloinatur.

Before the coming of this writ to me, the goods
and chattels within mentioned were eloigned and
removed, by the within named *C. D.* to places to
me unknown, therefore I cannot cause the same to
be returned to the within named *A. B.* as I am
within commanded.

Return to a writ
of redeliverance.

By virtue of this writ to me directed, I have
caused to be delivered to the within named *L.* his
cattle

cattle within mentioned, as I am within commanded. The pledges within named are *John Denn*, and *Richard Fenn*. The answer of, &c.

John Doe,
Pledges to prosecute and
Richard Roe.

Summoners of the within named *C. D.* are *D. K.* and *J. B.* The answer of. Return to a pone summoned.

Every pone is only a summons to command the sheriff to summon or prefix a day to the parties, plaintiff and defendant, that they appear in *Banco*, &c.

RESCUE.

In Civil Cases.

RESCUE is the taking away and setting at liberty against law a distress taken for rent, or services, or damage feasant; but the more general notion of rescous is, the forcibly freeing another from an arrest, or some legal commitment, which being an high offence, subjects the offender not only to an action at the suit of the party injured, but likewise to fine and imprisonment at the suit of the king. *Co. Lit.* 160. *F. N. B.* 226. Rescue what.

If a man distrain cattle, and as he is driving them to the pound, they go into the owner's house, and he refuse to deliver them, this is a rescue in law. *Co. Lit.* 167. And what party is subject to.

But it is to be observed, that there can be no rescous, but where the party has had the actual possession of the cattle or other things whereof the rescous is supposed to be made; for if a man come to arrest another, or to distrain, and is disturbed, regularly his remedy is by action on the case. *Co. Lit.* 161. a. *Lit. Rep.* 296. If a distress be taken, and they go into the owner's house, and he will not deliver, it is a rescue. No rescue, where no possession.

It is a contempt of the court and punishable as a misdemeanor. *6 Mod.* 210. A contempt of the court.

“That upon pound, breach or rescous of goods
“distrained for rent, the person grieved shall in a
“special On poundbreach or rescous of good. party to

have action on the case.

“ special action on the case recover treble damages
“ and costs against the offenders, or against the
“ owner of the goods, if they come to his use.”
2 *W. & M. st.* 1. c. 5. s. 5. And it is held he
shall recover treble costs. 1 *Salk.* 205.

The offence of
rescuing persons
on mesne process.

The offence of rescuing persons on *mesne process*,
or in *execution after judgment*, subjects the offender
to a writ of *rescous*, or a general action of trespass
vi & armis, or an *action on the case*, in all which da-
mages are recoverable. Also it is the frequent
practice of the courts to grant an *attachment* against
such wrong-doers, it being the highest violence
and contempt that can be offered to the process of
the court. *F. N. B.* 226. 3 *Bulstr.* 205. *Co.*
Lit. 161. *Cro. Jac.* 446. *Hob.* 180.

Also an attach-
ment.

Declaration for a
rescue.

In an action for a rescue, the plaintiff must al-
ledge in his declaration all the material circum-
stances; as, that such a writ issued, that he was
arrested and in custody, and that he was rescued on
such a day. *Godb.* 125. 1 *Lutw.* 130.

Rescue from any
of the courts of
Westminster,
without striking
a blow, forfeits
goods, and pro-
fits of the land.

He who rescues a prisoner from any of the courts
at *Westminster-hall*, without striking a blow, shall
forfeit his goods and the profits of his lands, and
suffer imprisonment during life: but not lose his
hand, because he did not strike. 22 *E.* 3. c. 13.
3 *Inst.* 141.

Action will lie
for a rescue of a
person in execu-
tion or *capias utlagatum*.

And an action will lie for the rescous of a per-
son in execution, or on a *capias utlagatum*, against
the rescuer, tho' the party injured hath his remedy
against the sheriff. *Hest.* 95. *Cro. Car.* 109.
Hob. 180. *Holt.* 98.

Attachment will
be granted against
a peer.

An attachment will not only be granted against
a common person, but even against a *peer of the*
realm, for rescuing a person arrested by due course
of law; so that if the *sheriff* in any case return to
the court, that a person arrested, or goods seized,
or possession of lands delivered by him, by virtue
of the king's writ, were *rescued* or *violently* taken
from him, &c. they will award an attachment
against the rescuers. But they will not grant such
attachment unless the officer returns the rescue, for
it

But will grant no
attachment, un-

Rescue.

247

it hath been found by experience, that officers will take upon them to swear a *rescous*, where they will not venture to return one. 2 *H. P. C.* 153. 6

Mod. 141.

The stat. 8 & 9 *W. 3. c. 27. sect. 15.* inflicts a penalty of 30 *l.* for resisting the officer in *Whitefriars*, &c. and the offender to suffer imprisonment and be set in the pillory. And if any *rescous* be made of any prisoner within any pretended privileged place there mentioned, the person making *rescous*, or assisting the same, being convicted shall forfeit 500 *l.* and in default of payment to be transported to the plantations for seven years, and any person harbouring a rescuer, knowing him to be such, to be transported for seven years.

A penalty for resisting an officer in certain places and imprisonment.

Upon reading of the return of a rescue, an attachment goes of course in the first instance. *Rep. and Cas. Pract. C. P.* 126. *Bridger v. Coley.* *Trin.* 5 *Geo. 2. K. B.* *Young v. Payne.* *Salk.* 586. but it's never granted on affidavits. 2 *Salk.* 586.

On reading, the sheriff's return of a rescue, attachment of course.

If the lord distrain for rent where none is due, the tenant may lawfully make rescue: so may a stranger if his beasts be distrained when no rent is due. So if the tenant tender the rent when the lord comes to distrain, and yet he does distrain, or if he distrain any thing not distrainable, as beasts of the plough, when other sufficient distress may be taken, the tenant may make *rescous*; so may he, if the lord distrain in the highway or out of his fee. *Co. Lit.* 47. 160. *b.* 161 *a.*

In what cases rescue justified.

But the defendant cannot break open the pound and take out the cattle, tho' the distress be without cause, because they are in the actual custody of the law. *Salk.* 247.

Cannot break pound.

He cannot make rescue against a sheriff's warrant tho' the debt be not due. *Co. Lit.* 165. But if a sheriff will by the general authority committed to him by law arrest for felony, if he be innocent, he may rescue himself. *Cro. Jac.* 486. 5 *Co.* 68.

No rescue against warrant, though debt not due.

In

In Criminal Cases.

In criminal mat-
ters,

RESCUE is the forcibly and knowingly free-
ing another from an arrest or imprisonment,
and it is generally the same offence in the *stranger*
so rescuing, as it would have been in a gaoler to
have voluntarily permitted an escape: but upon *vol-
untary escapes*, the principal must first be attainted,
before the rescuer can be punished, because it may
turn out, that there has been no offence committed,
Fest. Cr. L. 344. 1 Hale, 607.

Rescuing a per-
son for felony, is
so.

It seems agreed, that the rescuing a person im-
prisoned for felony, is also felony by the common
law. *1 Hal. Pl. Cr. 606.*

So the same for
high-treason,

That a stranger who rescues a person committed
for and guilty of high-treason, knowing him to be
so committed, is in all cases guilty of high trea-
son; *Stamf. Pl. Cr. 11.* whether he knew that
the prisoner were so committed or not, *Cro. Car.*
583.

To make it fe-
lony,

To make a rescue felony, Lord *Hale*, says,
1. That it is necessary that the felon be in custody
or under arrest for felony; and therefore if *A.* hin-
der an arrest, whereby the felon escapes, the town-
ship shall be amerced for the escape, and *A.* shall
be fined for the hindrance of his taking; but it is
not felony in *A.* because the felon was not taken,
1 Hal. H. P. C. 606.

To make a res-
cue felony, the
party rescued
must be under
custody for felo-
ny, &c.

So to make a rescue felony, the party rescued
must be under custody for felony, or suspicion of
felony; and it is all one, whether he be in custo-
dy for that account by a private person, or by an
officer, or warrant of a justice, for where the arrest
of a felon is lawful, the rescue of him, is felony;
but it seems necessary he should have knowledge
that the person under arrest for felony, if he be in
the custody of a private person. *Ibid.* But if he
be in custody of an officer, as *constable* or *sheriff*,
there

Necessary to have
knowledge that
the person is un-
der arrest for fe-
lony.

there at his peril he is to take notice of it ; and so it is if there be felons in a prison, and *A.* not knowing of it, breaks the prison, and lets out the prisoners, though he knew not that there were felons there, it is felony. 1 *Hale* 606. *Cro. Car.* 583.

A person committed for high treason, who breaks the prison and escapes, is guilty of felony only, unless he lets others also escape, whom he knows to be committed for high treason, not in respect of his own breaking of prison, but of the rescues of others. 2 *Haw.* 140.

Wherever the imprisonment is so far groundless or irregular, or the breaking of a prison is occasioned by such a necessity, &c. that the party himself breaking prison, is either by the common law, or by the statute *de frangentibus prisonam*, saved from the penalty of a capital offender ; a stranger who rescues him from such an imprisonment is in like manner also excused ; & sic è converso. 2 *Haw.* 139.

Return of a rescue of a felon by the sheriff against *A.* is not sufficient to put him to answer ; for it is a felony, without indictment or presentment. 25 *E.* 3. c. 4.

By 6 *Geo.* 1. c. 23. s. 5: " If any person shall rescue felons, ordered for transportation, or assist them in making their escape, he shall be guilty of felony, and suffer death without benefit of clergy. 9 *Geo.* 1, c. 28. rescuing persons arrested in the mint, felony."

This offence is punished by indictment, and such indictment ought to set forth, " the special circumstances of the fact with such certainty, as to enable the defendant to make a proper defence." For no defect can be aided by the verdict. *Dy.* 164. 1 *Roll. Abr.* 781. Therefore day material. *Moor* 55. *Rastal Entr.* 263. But not necessary to alledge the place where the rescue was made, for it is to be intended, where the arrest was, there also was the rescue, without the word *ibidem*. *Cro. Jac.* 345. 2 *Bulstr.* 208,

A person committed for high treason, breaks the prison and escapes, is guilty of felony.

If imprisonment of the person is groundless, rescue excused.

Return of a rescue of a felon by the sheriff, not sufficient to put to answer.

Rescuing felons ordered for transportation.

To be punished by indictment, and what it ought to set forth.

If

What is a good return.

If a *rescous* be made upon *mesne process*, the sheriff may return, that the defendant was arrested and rescued himself and that *non est inventus* after. *Kitch. 160. b. 2 Cro. 419.* Or that he and others rescued. *Kitch. 261. a.*

Mand. balli.

So the sheriff may return *mandavi ballivo*, who returned a *rescous*. *2 Rol. 457. l. 5.*

Return of rescued ought to be certain.

The return of a *rescous* ought to be certain, and therefore if it does not shew *where he was arrested*, it will be *insufficient*. So if it does not shew the place where he was arrested, for perhaps it was out of the county. *Yelv. 51. Mo. 422.*

Necessary to shew the year, &c.

It is necessary to shew the year, day, and the persons who made the rescue. *Mod. 422. Palm. 563.*

If return of a bailiff of franchise.

If the sheriff makes the return of a bailiff of a franchise, he ought to shew that he had the return of writs. *Cro. Eliz. 781.* And that the rescue was from such bailiff.

Ought to shew person who arrested was his bailiff, &c.

It ought to shew that the person to whom the sheriff directed his warrant, was his bailiff. *Str. 155.* And for what cause the warrant was directed to him. *Ibid.*

Sufficient that he made warrant.

It is sufficient to say, that he made a warrant to arrest, without saying under seal, for the word warrant imports it. *2 Jon. 197.*

Sufficient that he was arrested, &c.

Sufficient that he was rescued out of the custody of a bailiff by virtue of a warrant to him made; for this is out of the custody of the sheriff. *Jon. 197. Salk. 586. 2 Lev. 28.*

That he was taken in the county.

That he was arrested in the county aforesaid, tho' it does not say *within his bailiwick*; for it shall not be intended out of it, if it be in the county. *Yelv. 51.*

Rescued from A. bailiff of a liberty, without saying, he had return, &c.

That he was rescued from A. bailiff of a liberty, to whom he directed his warrant, without saying, that he had the return of writs, for it shall be intended the bailiff of the sheriff, and the words of a liberty, rejected. *Cro. Eliz. 781.*

That several rescued him.

That several rescued him, without saying, & *quilibet eorum se rescussit*, for it is in the affirmative. *1 Vent. 2.*

That

That he was rescued from the sheriff, tho' taken by the bailiff. *Str.* 417.

Rescued though taken by the bailiff.

If it appear on the return that the warrant was to two, and the arrest by one only, yet the return is good; for it is no exception in what relates to public justice. *Str.* 117.

If warrant to two arrest by one, rescued from him good.

That the bailiff arrested the defendant is good. *Str.* 225. *Foss.* 362.

That the defendant being in my custody, is sufficient. *Ibid.*

If one taken on *mesne process*, be once in prison, cannot return rescue. *Roll. Rep.* 441.

If once in prison cannot return this.

The execution of this writ appears in the schedule hereto annexed.

Return of rescue by several.

The answer of &c.

By virtue of his majesty's writ to me directed, and to this schedule annexed, I duly made my warrant, and directed the same to *A. S.* my bailiff, commanding him, thereby to take *W. C.* in the said writ mentioned, if he should be found in my bailiwick and him safely keep, so that I might have his body before our sovereign lord the king, at *Westminster*, on *Tuesday* next after the morrow of All Souls, to answer to *A. H.* in the said writ named, in the plea and to the bill therein mentioned, which said bailiff by virtue of my aforesaid warrant, afterwards on the day of in the year of the reign of our lord the now king, at in the parish of in my county arrested and took the body of the aforesaid *W. C.* according to my said warrant, and kept and detained the said *W. C.* under such arrest and in custody as aforesaid, for want of bail to the said writ; from thence for the space of one hour then next following, and until the said *W. C.* and one *J. K.* of the same place Esq. *G. H.* of the same place gent. and *L. M.* of the same place gent. together with twenty other persons, to me and my said bailiff at unknown, with force and arms, to wit, with swords, guns, pistols, bayonets, knives, sticks and filts, upon the said *A. T.* my bailiff, then and there made

made an assault, and then and there beat, wounded and ill treated him, so that his life was thereby greatly despaired of, and the aforesaid *W. C.* being in custody and under the said arrest so as aforesaid, then and there out of my custody, and the custody of the said bailiff, with force and arms, to wit, with the offensive weapons aforesaid, against my will and the will of my said bailiff, did forceably, violently, unlawfully and riotously, take and rescue, and at his free will and pleasure set and permitted to go at large wheresoever he pleased, and he the said *W. C.* then and there with force and arms, to wit, with the offensive weapons aforesaid, against my will and the will of my said bailiff, unlawfully then and there rescued himself out of my custody, and the custody of my said bailiff, against the peace of our said lord the king, and afterwards the said *W. C.* was not found in my bailiwick.

Rescue by defendant himself.

Boh. Eng. law.
430.

That by virtue of this writ, I made and directed my warrant to one *T. C.* my bailiff to attach the within named *I. C.* by force whereof the said *T. C.* the ninth day of *June*, in the 26th year of the reign of our lord the now king, within written, at *B.* in the county within written, did take and arrest the aforesaid *I. D.* being willing to bring him before you (the justices of *C. B.*) to do and receive as within I am commanded: and afterwards (that is to say) the said ninth day of *June* in the year aforesaid, the aforesaid *T. C.* late of, &c. at *B.* aforesaid in the county aforesaid upon the said *T. C.* my said bailiff, made an assault, and then and there from the said bailiff flew, escaped and rescued himself: and afterwards I could not find the said *I. D.* within my bailiwick.

D. E. Esquire, Sheriff.

County

County Court.

THE policy of our ancient constitution, as regulated and established by the great *Alfred*, was to bring justice home to every man's door, by constituting as many courts of judicature as there are manors and townships in the kingdom; wherein injuries were redressed in an easy and expeditious manner, by the suffrage of neighbours and friends. These little courts however communicated with others of a larger jurisdiction, and those with others of a still greater power; ascending gradually from the lowest to the supreme courts, which were respectively constituted to correct the errors of the inferior ones, and to determine such causes as by reason of their weight and difficulty demanded a more solemn discussion. The course of justice flowing in large streams from the king, as the fountain, to his superior courts of record; and being then subdivided into smaller channels, till the whole and every part of the kingdom were plentifully watered and refreshed.

These inferior courts, at least, the name and form of them, still continue in our legal constitution, but as the superior courts of records have in practice obtained a concurrent original jurisdiction with these; and as there is besides a power of removing plaints or actions thither from all the inferior jurisdictions; upon these accounts (among others) it has happened that these petty tribunals have fallen into decay, and almost into oblivion: whether for the better or for the worse, may be matter of some speculation; when we consider on the one hand the increase of expence and delay, and on the other the more upright and impartial decision that follow from this change of jurisdiction.

For the better government of the county, and for the punishment of evil doers therein, the sheriff had

Policy of our ancient constitution was to bring justice home to every man's door, by constituting as many courts of judicature, as there are manors.

These little courts communicated with others of a larger jurisdiction and those of greater power.

Inferior courts still continue in our legal constitution.

For the better government of the county, two courts appointed.

Torne.

County court.

Afterwards found too heavy for sheriff to administer justice in both courts.

Leets were derived out of the torne, and hundred courts out of the county court.

And that people might have justice done at their own doors.

County court, incident to the office of sheriff; but not a court of record, holds plea for under 40s.

Exclusive jurisdiction by this statute.

Holds plea of real actions, and personal actions by writ of justices.

had two powers or courts appointed; the one the *sheriff's torne* unto which all the county were compellable to come of a certain age to hear the articles and things given in charge, so that they might not be ignorant of the laws whereby they were to be governed, and where they were also to be sworn to their allegiance. The other was the *county court*, to give remedy between man and man for any personal action under 40s.

Afterwards it was found that the administration of justice was too great a thing for the sheriff, by reason of the multitude of people, and for their ease and better government, and more easy administration of justice, *leets* were derived out of the *torne*, and were granted to the lords of franchises or manors; and hundred courts were derived out of the county court granted by the kings to the *lords* of certain liberties, to hold plea under 40s. of contracts made within the hundred. The hundred court, says Sir *Edward Coke*, was derived out of the county court, for the ease of the people, that they might have justice done to them at their own doors, without any charge or loss of time. 2 *Inst.* 71.

The *county-court*, is a court incident to the jurisdiction of the sheriff; it is not a court of record, but may hold plea of debt or damages under the value of 40s. Over some of which causes, these inferior courts have, by the express words of the statute of *Gloucester*, 6 E. 1. c. 8. a jurisdiction totally exclusive of the king's superior courts, providing, "That sheriffs shall plead pleas of trespass in their counties, as they have been accustomed to be pleaded: And that none shall have writ of trespass before justices, unless he swear by his faith, that the goods taken away were worth 40s. at the least."

This court may also hold plea of many real actions, such as dower, right patent, or right ward. 4 *Inst.* 266. 3 *Inst.* 312. and of all personal actions to any amount, by virtue of a special writ called a *justicies*; which is a writ issued out of the chancery

chancery; empowering the sheriff for the sake of dispatch, to do the same justice in his county-court, as might otherwise be had at *Westminster*. *Finch. 318. F. N. B. 152.*

The freeholders of the county, are the real judges in this court, and the sheriff is the ministerial officer. This great conflux of freeholders, which are always supposed to attend at the county-court, is the reason why all acts of parliament at the end of every session, were wont to be there published by the sheriff; why all outlawries of absconding offenders are there proclaimed: stat. 13 *Eliz. c. 3.*; and why all popular elections, which the freeholders are to make, as formerly of sheriffs and conservators of the peace, and still of coroners, verderors, and knights of the shire, must ever be made in *pleno comitatu*, or in full county-court.

The freeholders are the judges, sheriff is the ministerial officer.

Freeholders attending this court, is the reason why all acts of parliament were formerly read; and why outlawries are there proclaimed; and all popular elections, &c. must be made in full county-court.

In the time of King *Edward the Elder*, the county-court, was a court of great dignity and splendor; the bishop and the ealderman (or earl) with the principal men of the shire, sitting therein to administer justice; the former to judge according to the ecclesiastical law; the latter to judge according to the laws of the kingdom. But its dignity was much impaired, when the bishop was prohibited, and the earl neglected to attend it, which was in the time of *William the Conqueror*; as appears by a mandate in *Seld. Jani. lib. 2. fol. 76. La. Edgar c. 5.*

The county court, was a court of dignity, and why.

But dignity now impaired.

In ancient times, pleas of the crown, indictments of felony, trespasses, and other offences, were depending in the torne, as appears by *Glanvil, lib. 1. c. 2, 3, 4.* by *Bracton* and *Britton* in divers places, and by *Fleta lib. 2. c. 62.* until the statute of *Magna Charta, c. 17.* which says expressly, "that no sheriff shall hold pleas of the crown." And by stat. 1 *Ed. 4. c. 2.* it is ordained, "that the sheriff, under-sheriffs, clerks, viz. county-clerks, and their ministers, shall bring, present, and deliver "all indictments taken before them in their turns

In ancient times, indictments, &c. were in this torne.

But sheriff is now not to hold pleas of the crown, but deliver them to the justices, &c.

Q

"or

“ or. law days to the justices of the peace, at the
“ next sessions of the peace.”

Sheriff to appoint
county clerk.

As this court hath of ancient times belonged to the sheriff, and incident to the office, the king cannot grant by letters patent, the office of county clerk, nor the fees, but of right belongs to the sheriff, *4 Co. Mitton's Case*, and such county clerk, ought to be endued with these qualities, according to the description of *Fleta*.

Qualities of the
county clerk.

Circumspection, fidelity, providence, humility, peace, and modesty; and must know the laws and customs of the country, and have ability to instruct and direct the bailiffs or other ministers in dubious things, wherein they may not err.

Bracton.

And *Bracton* says, he must neither be attracted by price nor corruption, nor any sinister respect, to wander out of the way of right.

County clerk to
depute bailiffs,
&c.

The county clerk must be careful in deputing honest, able, and sufficient men, as bailiffs, for the executing of precepts issuing out of the court; and it is just cause of superseding them, if they take unreasonable distresses, or more than the accustomed fees, or do not make return of their precept to the county clerk, or the plaintiff's attorney. He must make the usual process after the complaints entered against the defendants, directed to the sheriff's bailiff, to summon, attach, or distrain the defendant by his goods, to appear at the next county-court after, to answer the plaintiff in the action.

County clerks
to make the usual
process, *&c.*

When he ad-
journs the court,
to appoint a day
certain for the
next.

At the adjourning of every court, he must appoint a day certain for the next court, to the intent, the county may know what time to resort thither, to have the writs of *exigent*, and *proclamations* read.

Holden from
month to month.

This court is to be holden and kept from month to month on a certain day, and shall be no longer deferred. *9 H. 3. c. 35. 2 Ed. 6. c. 25.* And the computation shall be by *lunar months*, *2 Inst. 71.* and not *kalendar*. And so within the *twelve shires of Wales*, their sheriffs shall keep their counties monthly.

And

And so within the county palatine of *Chester*.

34 *H. 8. c. 26.*

The necessity of keeping this court every month, and on a day certain, is by reason of the king's writ of *exigent*, which must be proclaimed or read there. The necessity of keeping it monthly.

And the coroners are to sit with the sheriff, at every county-court; to give their judgments upon outlawries. *Dyer* 223. *Finch*. 116. But in *London*, the judgment upon outlawries is given by the recorder. *Co. Lit.* 288: *b.* in the court of *Hustings*. Coroners to sit.

This court by the common law, may be kept or holden in any place, at the pleasure of the sheriff or under-sheriff, so that it be within the county, if it be not appointed by statute in a place certain. May be kept in any place.
As for instance, *Northumberland*; at the town of *Alnwick*. 2 *Ed.* 6. *c.* 5. *Suffex*, at *Chichester* one time, *Lewes* at another, and so *alternis vicibus*, for ever. 19 *H.* 7. *c.* 24.

Chester, in the shire hall of the said county. *Chester*.

33 *H. 8. c. 13.*

And the sheriff's shire courts in *Wales*; of the county of *Brecknock*, at *Brecknock*; of *Radnor*, at new *Radnor* and *Preston*; of *Montgomery*, at *Montgomery* and *Maghenteth*; of *Denbigh* at *Wrexham*; and of *Monmouth*, at *Monmouth* and *Newport*; *alternis vicibus*. Wales.

By stat. 7 & 8 *W.* 3. *c.* 25. it is enacted, "That after the 25th of *March*, 1696, all county-courts, holden for the county of *York*, and all other county courts, that were to be holden on a *Monday*, shall be called on *Wednesday*, and not otherwise; any custom to the contrary notwithstanding." County courts to be held on Wednesday.

But if a plea be there by *justices*, the sheriff ought to be there in person, and cannot make a deputy. For, if he does, the proceedings will be *coram non judice*, and void. 2 *Leon.* 34. 210. But, if the court is alledged to be held before the sheriff, it seems to be well. 21 *H.* 6. 34.

For to this court, all persons dwelling within the county, being summoned, ought to appear, To this court, all persons dwelling in the county are to appear.
by

by reason of their residence in it; and, if they do not appear according to summons, they are attached or distrained by their goods, to answer the plaintiff in the suit. But no fine can be imposed on any offender, because it is no court of record. 8 Co. 41. & 60.

Sheriffs of Wales.

By stat. 27 H. 8. c. 26. & 34 H. 8. c. 26. The sheriffs of the counties of *Wales*, shall hold plea of *replegiari*, and all other suits and complaints, under 40 s. in their county or shire courts; in like manner, all other sheriffs do within the realm of *England*.

Style of the court.

The stile of the court is, "*Bucks ss. the first court of the county of George Bedford, Esq; sheriff of the county aforesaid, held at Buckingham.*"
 "And the next court, the second, and so forth."

What this court does not hold plea of,

It holds no suits of charters for lands, or for inheritance, or to make several complaints upon one entire debt, nor any action to compel one to render an account, though under 40 s.; because the sheriff cannot assign auditors, who are judges of the record; and this is no court of record. 2 Inst. 380. Nor can hold plea of any debt due by record, otherwise, it is of debt upon record in the same court. Nor debt due on bond. Dalt. 412. Nor action of deceit, maintenance or forgery of false deeds. *Ibid.*

Of the Proceedings by Action.

The mode in which the proceedings are to be in this court.

THE plaintiff in this action, in the first place, is to find no pledges to prosecute in the suit as mentioned in the books.

First summons.

He, or his attorney, is first to take out a summons from the sheriff, returnable at the next county court, which is directed to the sheriff's bailiff, who is to summon the defendant; and, if he appears by attorney, the plaintiff must also enter his appearance by attorney, and enter or file

Plaintiff at next

file his declaration, wherein he is to shew his cause of action in the same form, as in the other courts, but ingrossed on parchment, with a double penny stamp. *Vide*, stat. 11 H. 7. c. 15.

court, to enter his appearance, and declare.

The next court, after filing the declaration, the defendant may imparle, and at the next court after, he is to put in his plea, on a double penny stamp parchment, and the plaintiff is to continue his suit from court to court.

Defendant may at next court imparle.

If issue be not joined at the next court following, plaintiff is to file his replication or demurrer.

To file replication, &c.

But, if freehold be pleaded, this court can proceed no further, if the action be upon plaint; but if brought by writ of *justicies*, which gives a power to the sheriff to hold plea of 40 s. or above; the plaintiff may reply, and shew his title, and the court may proceed and determine the issue. *Dalt.* 507.

If freehold pleaded, no further proceeding, unless by justicies.

Upon issue being joined, a jury is thereupon warned to appear, and try as in other cases.

Issue joined,

The proceedings are filed with the under-sheriff regularly, from court to court, and imparlances are granted of course.

Proceedings are filed.

When the trial is over, the verdict being for the plaintiff, he may have a *feri facias*, but cannot have a *capias ad satisfaciendum*, (though in *Wales*, the contrary is, by stat. 34 H. 8.) for this court being not of record, a *capias* does not lie, but an action may be brought upon this judgment in the superior court, though the verdict be under 40 s. *Cro. Eliz.* 96, *vide* my *Instr. Clericalis K. B.* p. 7. A *levari facias* may be had of the goods and chattels, but not of the land and chattels. *Lutw.* 1413.

Trial over, and verdict for the plaintiff, execution may be had against the goods, &c. but not a cap.

If the defendant should not appear at the next county-court after summoned, the bailiff having returned him, *warned or summoned*, the sheriff then issues out a writ of *distingas*, to distrain his goods, or a writ of attachment; and if he appear not on the return of the goods being levied, he issues an *alias* and *pluries*, and so on *ad infinitum*, until he does appear.

If the defendant does not appear, the next process is a *distingas*.

Goods distrained
to be kept.

And the goods or chattels, whereby the defendant is so attached or distrained, the bailiff shall keep them until the next county court, except the defendant replevy the same by two pledges, who shall become sureties, that the defendant do appear at the next county-court, to answer the plaintiff. But, if he do not replevy the goods, and defendant makes default at the next court, (at the day given by the distringas or attachment) the court shall award the goods so attached to be forfeited, and shall keep them, and he may distrain again to be at the next county-court.

The defendant may compel the plaintiff to declare, by giving a rule for fourteen days, next after the usual time allowed.

If there is a de-
lay of execution.]

If the sheriff delays execution, a writ *de executione judicii* may be directed to him out of chancery to do execution, and thereupon an *alias* and *pluries*, and attachment against the sheriff.

Custom in York-
shire, to sue out
a vend. expon.
after the third
attachment.

In *Yorkshire*, the custom is, in actions of debt to file a declaration, according to the cause of action, and to sue out a *venditioni exponas*, after the third attachment, to sell such goods as have been taken upon that and the two former ones; for this reason, that when the defendant absconds, or will not appear to the action, the plaintiff may receive the value of the goods distrained towards satisfaction of his debt and costs, else they would remain in the bailiff's hands, and the plaintiff be without remedy in this court. *Greenw. 34.*

Scire facias, after
year and day.

And in this court, no execution can issue without a *scire facias*, if the judgment is above a year old. And where a *scire facias* is requisite in the superior courts, so it is here.

If no plea put in
judgment by de-
fault.

If the defendant puts in no plea in time, then judgment is signed, or passes against him by his default, and a writ of inquiry is awarded the same day.

The Manner of holding this Court.

THE sheriff at the first court after his election and discharge of the old sheriff, must read his patent, and writ of assistance, and nominate his under-sheriff and county clerk, and appoint four deputies at the least, to make replevins for the ease of the county.

Method of holding the court.

"Yorkshire, ss. the first county court of J. B. Esq; sheriff of the said county, held at, &c. in the afore-said county, the day of in the 26th year of the reign of king George the Third, 1786, before A. B. and C. D. suitors of the same court."

Entry of the plaint in debt and case.

Then command the bailiff to make three proclamations, *O Yes, &c.* and say,

"All manner of persons, that have any thing to do at this county court of I. B. Esq; sheriff of the county of York, holden here this day for this county of York, come forth and give your attendance."

Bailiff to open the court, thus,

Command the bailiff to make proclamation again, and say, *"All manner of persons, keep silence until the king's writ of exigent and proclamation be read."*

Second proclamation.

A coroner is to be then present, to pronounce judgment of outlawry, against those that do not appear upon the *exigent* and proclamation, at the fifth county court.

Coroner to pronounce judgment of outlawry.

The manner of the coroner pronouncing is thus, viz. he takes the exigents in his hands, and says, *"Forasmuch as A. B. C. D. and the rest of the men, defendants, named in these writs of exigents, have been called five county days, and have not rendered their bodies to the sheriff of this county of York; therefore, we pronounce them, and every of them, outlawed."*

The manner of pronouncing the judgment.

The like for the women defendants, using the word *waived*, instead of *outlawed*.

Women.

Third proclamation.

Command the bailiff the third time to make proclamation, *O yes, &c.* and say,

"If any will enter any plaint, let him come forth, and enter them with the county clerk."

Then enter the plaint in this manner,

The form of the plaint, to be entered in the book,

Yorkshire, ss. A. B. complains of C. D. of a plea of debt 39 s. 11 d. or A. B. complains of C. D. of a plea of trespass in the case to the damage, of the said A. B. of 39 s. 11 d.

Proceedings thereon.

Then call the plaintiff thus: *"A. B. appear, or thou lovest thy plaint, three times."*

If he appear.

If he appear by his attorney, then enter the warrant of attorney, viz. the two first letters of his name, over the name of the plaintiff.

Then call the defendant thus,

Call defendant thus.

"C. D. appear, and answer A. B. in an action of debt, (or as the case is) or thou forfeit thy goods distrained, and further process will be awarded against them."

If he appear, then enter his appearance, the same as the plaintiff's.

Plaintiff has time to declare untill next court.

N. B. The plaintiff hath time to declare until the next court after the defendant's appearance, and the defendant imparles until the next court day after.

If he puts in his answer, plaintiff may join issue.

When the defendant puts in his answer, if the plaintiff joins issue, they may proceed to trial the next court day, if they proceed not farther by replication, &c.

If at issue, ven. &c. must issue.

If they be at issue, sue out a *venire facias* to summon the jury; then enter on the head of the panel thus: *The jury between A. B. plaintiff, and C. D. defendant, of a plea of debt.* When they are brought to the bar, bid the bailiff make proclamation, and say,

Proclamation for jurymen.

"You good men that be impannelled to try the issue between A. B. plaintiff, and C. D. defendant, answer to your names, every man upon the first call, upon pain and peril that shall fall thereon."

Oath to jury.

If twelve appear, swear them one by one, as follows, *"You shall well and truly try the issue joined between"*

"between the parties, according to your evidence."

"So help you God."

Being all sworn bid them stand together to hear the evidence;

Then swear the witnesses, "*The evidence that you are to give to this inquest, touching the matter in variance, shall be the truth, the whole truth, and nothing but the truth. So help you God.*" Oath to witnesses

The jury of course after the evidence is finished are to give their verdict in the same manner as in the courts above. Jury to give the verdict.

The verdict being pronounced and recorded, then adjourn the court to another day to be kept, commanding the bailiff to make proclamation, O yes, &c. and say, Proclamation after to adjourn.

"All manner of persons that have any thing more to do at this court, let them come forth and they shall be heard, otherwise they and every one else, may depart hence for this time; and keep their hour here on Wednesday, the day of next, at 10 of the clock in the forenoon. Adjournment of the court,

For proceedings in this court in replevin. *Vide title Replevin.*

The stat. 23 Geo. 2. c. 33. "impowers the suitors of the county court of *Middlesex*, together with the county clerk of the said county, in county court assembled, or the major part of them so assembled, upon any plaint to be entered in the said county court, in any suit, where the debt or damages shall not amount to 40s. to proceed in a summary way, and to make such orders, &c. as shall seem to them to be just. Proceedings in the county court of Middlesex.

"s. 1.

Section 2. enacts, "that it shall be lawful for the sheriff by his county clerk, to hold his county court, for the proceeding in pursuance of and under the authority of this act, on *Thursday* in every week, at some convenient place within the hundred of *Ossulston* in the county of *Middlesex*, and on the first *Tuesday* in every month, at some convenient place within Times and places appointed for, holding the county court.

"the

Monthly court
to be kept as
usual.

No plaints or or-
ders of the court
may be removed;

Except in reple-
vin.

Who may be
summoned.

Jurisdiction of
the county court
not extended.

Under-sheriff to
deliver every
month, three lists
of 12 freehold-
ers, to attend.

“ the hundreds of *Isleworth*, or *Elthorne*, and on the
“ last *Tuesday* in every month, at some convenient
“ place within the hundred of *Edmonton*; provid-
“ ed always, that the monthly court of the said
“ sheriff shall nevertheless be held and kept as has
“ been accustomed. *f. 2.*

“ That from and after the said 24th day of *June*,
“ no plaint to be entered in the said county court,
“ as aforesaid, nor any order or orders or other
“ proceedings to be had thereupon by virtue of
“ this act, shall be removed out of the said court
“ by any writ of *recordari*, *recordari facias loquelam*,
“ *certiorari*, or false judgment, or otherwise how-
“ soever; but such order or orders so to be made
“ by the said suitors and county clerk, shall be
“ final and conclusive to all parties whatsoever;
“ provided nevertheless, that all plaints in reple-
“ vin shall be proceeded in, and removeable in the
“ same manner, as if this act had not been made;
“ provided also, that no person or persons shall be
“ liable to be summoned to the said county court
“ at the suit of any plaintiff or plaintiffs, other
“ than such person or persons as was or were lia-
“ ble to be summoned to the county court of *Middlesex*,
“ before this act was made, and that this
“ act shall not extend to give the said county
“ court, any jurisdiction to hold plea of, or to
“ hear or determine any action, cause, or suit,
“ other than such action, cause, or suit, as the
“ county court of *Middlesex* might have held
“ plea of by plaint before the making of this act,
“ *f. 4.*

“ That the under-sheriff of *Middlesex* for the
“ time being, after the said 24th day of *June*,
“ shall, six days before the end of every month,
“ deliver to the county clerk of the said county
“ three several lists, each list containing the
“ names and places of abode of twelve persons,
“ to be by the said sheriff taken from the freehold-
“ ers book of the said county of *Middlesex*, as
“ suitors to attend the said county court, for the
“ succeeding

County Court.

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“ succeeding month for the several divisions here-
 “ after named ; that is to say, one list for the
 “ hundred of *Ossulston*, one for the hundred of
 “ *Isleworth* and *Elthorne* ; and one for the hun-
 “ dred of *Edmonton* ; and the county clerk of the
 “ said county, shall cause the said persons in the
 “ said several lists named, to be summoned to at-
 “ tend the said court at the time and place to be
 “ mentioned in the said summons ; for each of
 “ which lists the said county clerk shall pay the
 “ said under-sheriff the sum of four pence, and
 “ no more ; and no other suitor (except the per-
 “ sons so summoned, shall have any voice in the
 “ said county court, held under the authority of
 “ this act : and no person shall be liable to be
 “ put upon such list to attend the said court as a
 “ suitor thereof, oftner than once in every year.
 “ s. 7.”

None to attend
 more than once
 in a year.

Precepts in the County Court.

Yorkshire } **G**. M. Esquire Sheriff of the coun-
 to wit. } ty aforesaid, to *John Doe* and
Richard Roe my bailiffs of the hundred of *D*.
 I command you that you summon *Richard Fenn*,
 so that he be and appear at my next county court
 to be held at *York*, on *Wednesday*, the day
 of next to answer *John Denn*, in a plea
 of debt (or a plea of trespass on the case) hereof
 fail not. Given under the seal of my office this
 day of 1786.

Summons on the
 plaint.

Yorkshire s. *G. M.* Esq. Sheriff of the county afore-
 said, to, &c. I command you that you distrain (or
 attach) *Richard Fenn*, by his goods and chattels ;
 so that he be at my next county court to be held
 at *York*, on, &c. next, to answer *John Denn*, in a
 plea of debt, or trespass on the case, hereof, &c.
 Dated, &c. as before.

Distringas or at-
 tachment.

Yorkshire,

Deces tecum or
2d or 3d attach-
ment or distrin-
gas.

Yorkshire ss. G. M. Esq. sheriff of the county
aforesaid, to, &c. I command you, that you bring
to my next county court to be held on the
day of at, &c. all the goods and chattels of
Richard Fenn, which you have distrained by virtue
of a former precept directed to you at the suit of
John Denn in a plea of debt (or trespass on the
case) and that you further distrain (or attach the
said *Richard Fenn*, by his goods and chattels, so
that he be at the next court to be held at *York*, on
the day of next ensuing,
to answer the said *John Denn*, in the said plea,
and have there this precept. Dated, &c.

A venditioni ex
ponas.

Yorkshire } G. M. Esq. sheriff of the said county,
to wit. } to *John Doe*, my bailiff of the hundred
of *G. —*, greeting: I command you that you
expose to sale, a steer appraised at 20 s. of the goods
and chattels of *C. D.* for that the said steer was at-
tached at the suit of *E. F.* in a plea of debt upon
demand for thirty-nine shillings; and at the court
held on the day, &c. the said *C. D.* altho'
according to the custom of this court, used from
the time to the contrary whereof the memory of
man is not, the said steer is forfeited, and that you
have the money on the next court there to be held
on the day of, &c. next ensuing, to satisfy
the said *E. F.* of the debt aforesaid, and in what
manner, &c. Dated, &c.

A superedeas
upon an attach-
ment or distrin-
gas.

Yorkshire ss. G. M. Esq. sheriff of the county
aforesaid, to *John Doe*, &c. — greeting:
whereas I lately commanded you to attach *C. D.*
by all his goods and chattels, so that he should be
at my court to be held on the day of
to answer *E. F.* in a plea of debt; but
because the said *C. D.* has appeared by *J. S.* his
attorney to answer the said *E. F.* in his plea afore-
said, therefore I command you entirely to cease
from the execution of the said precept; and if
you have taken or distrained any goods or chattels
of the said *C. D.* by virtue of the said precept
that

that then, without delay, you re-deliver them to the said *C. D.* Dated, &c.

Yorkshire, ss. G. M. Esq. sheriff of the county afore-^{A subpoena, ad}said, to *George Smith, Thomas Hanks and John Deane*, ——— greeting: I command you and each of you, that laying all other matters aside, and notwithstanding any excuse, you and each of you be in your own proper persons at my next court to be held on *Wednesday*, the day of next, to testify and speak the truth in a certain matter of controversy, depending in the same court between *L. M.* plaintiff and *N. O.* defendant, in a plea of trespass on the case; and herein fail not, at your peril. Dated, &c.^{testificand'.}

Yorkshire, ss. G. M. Esquire, sheriff of the county afore-^{A levari facias.}said, to *John Doe and Richard Roe*, my bailiffs of the hundred of *O——*, greeting: because *C. D.* has recovered against *E. F.* thirty shillings in a plea of debt, and one shilling for his costs and charges, whereof the said *E.* is convicted in my county court, by the judgment of the same court; therefore levy according to custom the said thirty shillings adjudged in the said court, and the said one shilling for costs, and have you that money at the next court, to render to the said *C. D.* for his said debt and costs; and have there this precept, dated, &c.

Yorkshire ss. G. M. Esq. sheriff of the said county, to *John Doe and Richard Roe*, my bailiffs of the hundred of *O——*, greeting: I command you that of the goods and chattels of *C. D.* you cause to be made as well a certain debt of thirty shillings which *E. F.* has recovered in my county court against him, as thirteen shillings and ten pence, which were adjudged to the said *E. F.* in the same court for his costs and charges by him about his suit in that behalf expended, and have you that money at my next county court to be held at *York* in the said county, on the day, &c. to render to the said *E. F.* for the debt and damages afore-^{A fieri facias in debt.}said, whereof

whereof the said *C. D.* is convicted ; and this, &c.
Dated, &c.

Fieri facias upon
verdict for the
defendant.

Yorkshire *vs.* *G. M.* Esq. sheriff of the said county, to, &c. ——— greeting : I command you that of the goods and chattels of *C. D.* you cause to be made thirty two shillings and two pence; which were adjudged in my court to *E. F.* for his costs and charges according to the form of the statute, which he hath been put to by occasion, that the said *C. D.* unjustly prosecuted a plaint in a plea of trespass on the case against the said *E.* in my said county court as is lately found by a certain jury of the country ; and have that money at my next county court to be held at *York*, on the day, &c. to render to the said *E.* for his costs and charges aforesaid, whereof the said *C.* is convicted; and this, &c.

A fieri facias upon
a nonsuit.

Yorkshire, *vs.* *G. M.* Esq. sheriff of the county aforesaid, to *John Doe*, &c. greeting : I command you, that of the goods and chattels of *C. D.* you cause to be made fourteen shillings and four pence; which were adjudged to *E. F.* in the said court; before the suitors of the said court, according to the form of the statute in that case lately made and provided, for his damages, for that the said *C.* did not prosecute his plaint lately levied in the said court against the said *E.* in a plea of trespass on the case and have that money at my next court before the suitors of the said court, to be held at *York*, on the day, &c. to satisfy the said *E.* his costs and charges aforesaid, whereof the said *C.* is convicted ; and this, &c.

A fieri facias in
trespass.

Yorkshire, *vs.* *G. M.* Esq. sheriff of the county aforesaid, to *John Doe*, &c. greeting, I command you, that of the goods and chattels of *C. D.* you cause to be made 14*s.* 10*d.* which in the said court before the suitors of the same court were adjudged to *E. F.* for his damages which he had by occasion of a certain trespass done to the said *E.* by the said *C.* at, &c. and have that money, &c. to satisfy the said *E.* for his damages, whereof, &c.

Yorkshire

Yorkshire, fs. G. M. Esq. sheriff of the county A fieri facias in
 aforesaid, to, &c. greeting, &c. were adjudged to the
 said *E. F.* for his damages, which he had by occa-
 sion of a certain trespass on the case done to the
 said defendant at, &c. and have that money, &c.

Were adjudged for his damages which he had by oc- On promises,
 casion of certain promises and undertakings made
 to the said plaintiff, by the said defendant at, &c.
 and have that money, &c.

It appears to me clearly, that from these forms,
 the county clerk may make his several precepts in
 every case from the forms of the courts above, only
 varying the place of appearance, and return in the
 county court, instead of the returns in the courts
 above, and the sheriff's name is used instead of
 the king's, as in a *scire facias*; thus, "*Yorkshire, fs.*
 "*G. M. Esq. sheriff of the county aforesaid,* Sci. fa. after a
 "*greeting: whereas, A. B. lately in my county* year and day.
 "*court held before me at the castle of York, be-*
 "*fore the suitors of the same court, recovered*
 "*against C. D. &c. Dated under the seal of*
 "*my office this 4th day of June, and in the 26*
 "*year of the reign of King George the Third.*
 "*Vide Greenwood of Courts. p. 48."*

If there is a cause depending in a *wapentake* or Tolt to remove
hundred court or other inferior court *baron*, holder from the hun-
 By any lord of a manor, it may be from thence re- dred court into
 moved into this court, by a *tolt*, which comes the county court
 from the *Latin* word *tollo*, to take away, and is a
 precept, that supercedes all proceedings in those
 courts depending between the parties therein nam-
 ed, and the steward and bailiff return the record
 and proceedings thereon to the sheriff, and give no-
 tice to the parties to be there on the next court
 day.

If there be a writ of justices to the sheriff, Pone to remove
 there may issue a *pone* to remove the cause to the cause.
 one of the superior courts; which writ must be re-
 turned thus:

By

Return to a writ
of pone.

By virtue of this writ to me directed, I have before the justices of the lord the king of the bench at *Westminster*, the plaint that is in my county court by virtue of the writ of our lord the king of justices between *A. B.* and *C. D.* of a plea of debt as it is said as appears in the schedule to this writ annexed. The answer of, &c.

Schedule.

Yorkshire, } At my county court held at the castle
to wit. } of *York*, the day of in
the twenty sixth year of the reign of his present majesty. *A. B.* complains of *C. D.* of a plea of debt, in testimony of which, *R. L. S. R. T. O.* and *S. D.* four lawful men of the said county who were present at the said record, have set their hands and seals, the day and year above-written.

Writ of false
judgment.

A. B. complains of *C. D.* of a plea of debt 20*l.*

A writ of false judgment lies where an erroneous judgment is given in this court (being no court of record) then the party grieved by the judgment may have this writ, and remove all process of the suit into the common bench, and there it shall be examined; if it be found erroneous, the judgment shall be reversed, and the suitors of the court, who gave the judgment, amerced.

The return.

By virtue of this writ to me directed, I have recorded the record of the plaint which was in my county court, with the process and judgment between the parties within mentioned, and I have prefixed the same day to the said parties that they be before the justices within written, at the day and place within contained, as by this writ I am required, which record and process and judgment thereon appears in the schedule to this writ annexed. The answer of.

What's to be
set forth in the
schedule.

In the schedule set forth the stile of the court, plaint, (writ of justices) declaration, &c. to final judgment, then say, In witness whereof I have hereunto set my hand and seal this day of

1786

The warning of the parties, is sufficient by reading openly in court the writ, without other notice. *Dalt.* 201. This

This writ issues out of the chancery, directed to the sheriff, commanding him to go to such court of some lord or franchise, or hundred, or court baron or the like (*being no court of record*) where a plaint is sued, or a false judgment is supposed to be given in some suit which hath been in the court; and by this the sheriff is to make record of the same suit, in the presence of the suitors of the same court, and four lawful men of the county; and of this he is to make his certificate into the court above, under the seal, and the seals of four of the suitors of the same court at the day appointed by the writ. *F. N. B. 71. Plow. 74. Finch. 444.* 'Tis said nothing but the plaint shall be removed. *Dalt. 242.* though they be at issue. *Finch. 444.*

Accedat ad curiam.

If false judgment be given in any other court baron, than in the sheriff's court, then the writ of false judgment is called an *accedat ad curiam*. *Fitz. 18. d.*

A precept is to be made by the county clerk, to the steward and bailiff of the court, where the plaint is, commanding them that taking with them four discreet and lawful free tenants of the county, to have the record of the plaint between the parties in the writ mentioned, so that the sheriff may have such certificate of the record before the justices at *Westminster*, on the day in the writ mentioned, under his seal, and the seal of four lawful men of the same court, and that they prefix a day to the parties to be there ready to proceed therein: and have there the names of the said four lawful men, and that precept.

County clerk to make a precept.

The steward and four suitors return the precept to the sheriff with the plaint and all things required under his seal and the seal of four suitors; the sheriff then returns the writ thus,

Steward to return.

By virtue of this writ to me directed, I have been to the court within written, and have in full court caused to be recorded the plea within mentioned, and the same record (as appears in the schedule to this writ annexed) I have before the justices of the

Sheriff's returns

R

lord

County Court.

lord the king within written, at the day and place within mentioned, under my seal, and the seal of *I. R. C. D. & E. P.* four lawful men of my county, of those who were present at that record. And to the parties within written, I have prefixed a day, in the writ specified, that they be then ready to proceed in the plea as shall be just, as within I am commanded. The answer of.

By writ the sheriff to go in person.

By this writ the sheriff is commanded to go in person to the court in the writ mentioned; and that he shall take with him four knights of the same county, and there must require the sight of the plea, and in full court. The sheriff must make a record of the said plea or suit, in the presence of the said knights, and of the suitors of the same court; and he must annex the record so made as a schedule, to the back of the writ: and then he must return and certify the same under his own seal, and the seals of four suitors of that court at the day appointed in the writ, into the king's court. *Term de ley.* But it seems it may be either the sheriff or under-sheriff.

Or thus, if sheriff goes in person.

Or it may be thus, By virtue of this writ to me directed I have been in my proper person taking with me *I. H. T. H. &c.* four good and lawful men of my county, I have been to the court baron of *G. S. &c.* held at *P.* for the honor of *P.* and have caused the plea aforesaid to be recorded at the day and place within contained, as I am within commanded. Whereupon the suitors of the same court at *P.* aforesaid, in their full court aforesaid did altogether refuse to let me the sheriff execute the said writ, or in any manner to intermeddle in the plea aforesaid, whereby I am not able to make execution of this writ. The answer of, &c. *Reg. Judici, 263.*

What sheriff may further return.

To these writs the sheriff cannot return, that no court was held, except he also return, that he requested the lord to hold one, *Dalt. 205;* then the justices will award a distress, to distrain the lord to hold his court. *Fitz. Return. 21.*

Upon

Upon the writ of false judgment, which is an *excedas ad curiam* the sheriff must take with him four men to the court baron or hundred, but that they need not be knights. *Fitz.* 18.

Need not be knights.

It must be returned under the seal of the sheriff, and the seals of four of the suitors of the same court. *Ibid.*

Returned under seal.

The sheriff returned that he had been at the court, and that the suitors would not record the plea. *Dyer*, 262.

Upon this writ, although the plaint or suit be determined, yet the sheriff is to make execution of the writ, he is to require the sight of the plea, and to record the same, and to return the same record with the writ. *Dy.* 268.

Require sight of plea.

The sheriff returned that he came to the court to record the plea, and that the suitors said that there was no such plea. *Fitz. Judg.* 13. *Nat. Br.* 16. Or that the suitors, would not deliver him any record. *Fitz. Proc.* 128. Or that the suitors would not deliver him the record nor suffer him to have it. *Lib. Intr.* 342, 343.

Suitors said no such plea.

In this writ, if the sheriff returneth that the writ came to him so late, that execution of the same could not be made, this is a good return: and upon such return the party may have an *alias* directed to the sheriff and a *pluries*. *Lib. Intra.* 345. d.

Tarde good.

If the plaint is in a hundred or court baron the sheriff returns thus,

By virtue of this writ taking with me *B. C. &c.* four lawful men of the said county, I have in my proper person gone to the court of *E.* held before *N.* the day of in the year within written, and in that full court, have caused to be recorded the plea within written. And I have ready that record before the justices within written at the day and place within contained; under my seal and the seals of four lawful men of the same court, who were present at that record, which is to this writ annexed. And I have prefixed a day to the parties named in the said writ, that they be then there

Return by the sheriff where the writ of false judgment or *excedas ad curiam* is directed to record the plaint out of a hundred court or court baron

County Court.

ready to proceed in that plea, as shall be just, as by this writ I am required. The answer of.

If the sheriff sends his mandate to the bailiff for execution of the writ, the return is thus :

If there is a bailiff of a liberty, and sheriff sends his mandate, the return is thus.

By virtue of this writ to me directed, I have sent to the bailiff of the liberty of *P. Es of A.* of his hundred of *L.* in the county of *N.* who hath full execution of all writs and precepts to be executed within that liberty, and also the return of the same, to whom the execution of this writ doth wholly belong to be made; for that execution thereof cannot otherwise be made thereof in my bailiwick, out of the said liberty; which said bailiff hath answered me thus: That he taking with him *J. D. E. H. &c.* four discreté and lawful men, of the county aforesaid, hath in his proper person gone to the hundred within written; and in that full hundred hath caused the plea to be recorded, which is in the same hundred, without the writ of the lord the king, &c. which said record he hath sent to me, and which I herewith certify to the justices of the lord the king, within mentioned, at the day and place within contained, under my seal, and the seals of the aforesaid *J. D. E. H. &c.* four lawful men of the same hundred, of those who were present at that record: And I have prefixed the same day to the parties, that they be then there to proceed in that plea as shall be just: and that the residue of this execution appears in a certain schedule to this writ annexed.

D. E. Esq. Sheriff.

T. S. Gent. Bailiff.

Sheriff's Duty respecting the Choice of a Coroner.

Coroner an ancient officer.

THE coroner is a very antient office at the common law. He is called *coroner, coronator*, because he hath principally to do with pleas of the crown, or such wherein the king is more immediately

ately concerned. 2 *Inst.* 31. 4 *Inst.* 471. And in this light the lord chief justice of the *King's Bench* is the principal coroner in the kingdom, and may (if he pleases) exercise the jurisdiction of a coroner in any part of the realm. 4 *Rep.* 57. But there are also particular coroners for every county of *England*; usually four, but sometimes six and sometimes fewer. *F. N. B.* 163. This officer is of equal antiquity with the sheriff; and was ordained together with him to keep the peace, when the earls gave up their wardship of the county.

Chief justice of
England, the
principal coroner

Particular coron-
ers for every
county.

He is still chosen by all the freeholders in the county court, as by the policy of our antient laws, the sheriffs, and conservators of the peace, and all other officers were, who were concerned in matters that affected the liberty of the people. 2 *Inst.* 558. and as verderors of the forest still are, whose business it is to stand between the prerogative and the subject in the execution of the forest laws. For this purpose, there is a writ at common law, *de coronatore eligendo* directed to the sheriff, in which it is expressly commanded, "that in his full county, he cause one other or more, as the case is, to be chosen in the place of the deceased coroner, who having taken his oath in the usual manner, may do all things which belong to the office of a coroner, and cause such an one to be chosen, as best knoweth and can attend that office; and conclude, with commanding the sheriff to certify to the court, the name of the person chosen."

Chosen by the
freeholders,

Writ de coronatore
eligendo to
elect.

And, in order to effect this the more surely, it was enacted by stat. 3 *Ed.* 1. c. 10. "That none but lawful and discreet knights should be chosen;" and there was an instance in the 5 *Ed.* 3. of a man being removed from this office, because he was only a merchant. 2 *Inst.* 32. But, it seems it is now sufficient, if a man hath lands enough to be made a knight, whether he be really knighted or not. *F. N. B.* 163. for the coroner ought to have estate sufficient to maintain the dignity of his

Who chosen
formerly.

Who now may
be chosen,

office, and answer any fines that may be set upon him for his misbehaviour. *Ibid.* And if he hath not enough to answer, his fine shall be levied on the county, as a punishment for electing an insufficient officer. *Mirr. c. 1. f. 3. 2 Inst. 175.*

Office fallen into
disrepute, and
the reason.

Now, indeed through the culpable negligence of gentlemen of property, this office hath been suffered to fall into disrepute, and get into low and indigent hands; so that, although formerly no coroners would condescend to be paid for serving their country, and they were by the aforesaid statute of *Westm. 1. 3 Ed. 1. c. 10.* expressly forbidden to take a reward under pain of great forfeiture to the king; yet, for many years past, they have only desired to be chosen for the sake of their perquisites; being allowed fees for their attendance by stat. 3 *H. 7. c. 1.* which *Sir Edward Coke* in 2 *Inst. 210.* complains of heavily, though since his time, those fees have been enlarged by stat. 25 *Geo. 2. c. 29.* for every inquisition not taken on view of a body dying in prison, taken within *England* by any coroner in any township or place, contributory to the rates directed by 12 *Geo. 2. c. 29.* called county rates, 20s. for every mile he shall travel, 9d. over and above the 20s. *f. 1.* For every inquisition taken upon view of a body dying in any prison within *England*, not exceeding 20s. *f. 2.*

Fees.

To have 13s.
4d. out of the
goods of the
slayer.

Over and above the recompence hereby appointed for inquisitions, taken as aforesaid, the coroner shall have a fee of 13s. 4d. payable by 3 *H. 7. c. 1.* out of the goods of the slayer, or out of the ameracements imposed upon the township, if the slayer escape. *f. 3.*

Coroner except-
ed.

No coroner of the king's household, verge of the king's palaces, admiralty, *Durham, London,* and borough of *Southwark*, or of any franchise belonging to the said city, nor any coroner of any city, borough, town, liberty, or franchise, not contributory to the rates directed by the 12 *Geo. 2. c. 29.* or within which such rates have not been usually assessed,

assessed, shall be intitled to any fee given by this act, but shall receive such fees, &c. as they were before this act intitled to. §. 5.

No coroner shall take for his office doing, in case of the death of any person, any other fee than ^{In case of death,} 13 s. 4 d. ^{limited by stat. 3 H. 7. c. 1. and other} than the recompence hereby appointed, if he does, guilty of extortion. §. 4.

The coroner is chosen for life, but may be removed, either by being made sheriff, or chosen verderor, which are offices incompatible with the other, or by the king's writ *de coronatore exonerando*, for a cause to be therein assigned, as that he is engaged in other business, is incapacitated by years or sickness, hath not a sufficient estate in the county, or lives in an inconvenient part of it. *F. N. B.* 163, 164. And by the 25 *Geo.* 3. c. 29. extortion, neglect, or misbehaviour, are also made causes of removal. §. 6.

The name of such freeholders, as are at the election of coroners, ought to be set down in the county court book, for to certify such their election. ^{Names of freeholders, at election to be set down,}

By the 28 *Ed.* 3. cap. 6. it is enacted, "That all coroners of the counties shall be chosen in the full counties of the most meet and lawful people that shall be found in the same counties, to execute the said office; saved always to the king, and other lords, who ought to make such coroners their seignories and franchises." ^{To be chosen in full counties,}

The sheriff is to give notice of the day of election to all the market towns in his county, a week before. ^{The sheriff to give notice a week.}

The sheriff of *Oxfordshire* will proceed to the election of a coroner for the said county, in the room of *T. A. Esq;* deceased, at the county-court to be held at by adjournment, on *Wednesday* the fourth day of *July* next, at ten o'clock in the forenoon of the same day, at which time and place, the freeholders of the same county, are desired to attend. Put the name of the sheriff. ^{Notice.}

The vacancy is always declared at a former court, and that is the reason of the word adjournment in the notice. And it is generally fixed on the church doors.

The election may be at any town in the county, as the sheriff and the candidates agree upon; if no opposition at the usual place where the county-court is held, if at any other place, than where the county court is held, the court to be adjourned to that place.

Under-sheriff
may do this.

The sheriff himself is not bound to be present, but the business may be done by his under-sheriff.

Proclamation:

When the election begins, proclamation is to be made in this manner, "All manner of persons, who have any thing to do in this election of coroner for the county of _____ in the room of _____ Esq; deceased, let them draw near and give their attendance."

N. B. In case of a poll, the freeholders are not sworn, but their qualifications, and where they live, are to be entered in the poll book.

Proclaim.

After they have done giving their votes, then proclaim, "If any one can gainsay why _____ should not be appointed one of the coroners for this county, let him come forth, and he shall be heard, otherwise the sheriff of _____ will declare the said _____ duly elected."

The oath to be
administered by
the sheriff.

Then administer the oath thus, "You shall swear that you will well and truly serve our sovereign lord the king's majesty, and his liege people, in the office of a coroner, and as one of his majesty's coroners of this county of _____ and therein you shall diligently and truly do, and accomplish, all and every thing and things appertaining to your office, after the best of your cunning, wit, and power, both for the king's profit, and for the good of the inhabitants within the said county, taking such fees as you ought to take, by the laws and statutes of this realm, and not otherwise." So help you God.

The

The oaths of allegiance, supremacy, and abjuration, are to be taken, and then the oaths of office; when the coroner is elected, and sworn into his office, he is to remember the qualification acts, and in due time, to take the sacrament, and oath of abjuration.

Oath of allegiance, &c.

“ By virtue of this writ to me directed, in my full
 “ county court, held (by adjournment) at *Oxford*,
 “ in the county of *Oxford*, on the day of
 “ in the year within written; by the
 “ assent of the same county, I have caused *E. H.*
 “ Esq; to be chosen coroner in the place of the
 “ within named *C.* deceased, which said *E. H.*
 “ as the manner is, hath taken corporal oath, to
 “ do and keep those things which to the office of
 “ coroner in the said county doth belong, as I am
 “ within commanded. The answer of.

Return to the writ.

The office and power of a coroner are like those of a sheriff, either judicial or ministerial, but principally judicial. This is in great measure ascertained by stat. 4 *Ed. 1.* s. 2.

The office of coroner, like those of sheriffs.

The ministerial office of the coroner is only as the sheriff's substitute. For when just exception can be taken to the sheriff, for suspicion of partiality (as that he is interested in the suit, or of kindred, either to the plaintiff or defendant, or party to the suit,) the process must then be awarded to the coroner instead of the sheriff, for execution of the king's writs. 4 *Inst.* 271. If one of the sheriffs of *London* die, and no other chosen, process is to go to the coroner to arrest. But for counties, the stat. 3 *Geo. 1.* c. 15. the under-sheriff is to execute the office in the deceased's name, until another be appointed.

Ministerial office

The coroner is to sit with the sheriff in the county court, to give judgment upon outlawries, which judgment shall be given and be pronounced by him upon the *quinto exact*. And the sheriff is to return the coroner's judgment of outlawry, for the custody of the record itself doth not appertain to the coroners, but the sheriff is to have the keeping thereof, and of the *exigent*, which is the sheriff's

To sit with the sheriff in his court, to give judgment on outlawries.

1115

Coroner of London how eligible.

In case of scrutiny sheriff ought to grant a poll, and why.

riff's warrant to proclaim the judgment, and which record with the exigent, the sheriff is to return into the king's-bench, &c. *Dyer* 223. *Finch* 116.

The coroner of *London*, is eligible by the mayor and commonalty of the city, and no other coroner has any power there.

In this case of election by freeholders, where the majority cannot be determined by the view, upon the holding up of hands, the sheriff upon the demand of a poll to be taken of the numbers, ought not to deny it; nor ought he to deny a scrutiny into the polls, when properly required, upon a suggestion that non-freeholders have polled: for how otherwise can the majority of freeholders be ascertained? It is an election at common law, and this scrutiny is as incident to inquire into the polls, as numbering of the polls is incident to the holding up of hands; nor can the just majority be otherwise duly discovered or declared. *Freem.* 17. 2 *Vent.* 25. 1 *Vent.* 206. 2 *Lev.* 50.

Election of Members.

What House of Commons consist of,

In this state wisely contrived that the people should

THE *Commons* consist of all such men of any property in the kingdom, as have not seats in the House of Lords; every one of which has a voice in parliament, either personally, or by his representatives. In a free state every man, who is supposed a free agent, ought to be, in some measure, his own governor; and therefore a branch at least of the legislative power should reside in the whole body of the people. And this power, when the territories of the state are small and its citizens easily known, should be exercised by the people in their aggregate or collective capacity. But this will be highly inconvenient, when the public territory is extended to any considerable degree, and the number of citizens is increased. In so large a state as ours, it is therefore very wisely contrived

trived that the people should do that by their representatives, which it is impracticable to perform in person; representatives, chosen by a number of minute and separate districts, wherein all the voters are, or easily may be, distinguished.

do that by their representatives, which they cannot perform in person.

The counties are therefore represented by knights, elected by the proprietors of lands: the cities and boroughs are represented by citizens and burgesses, chosen by the mercantile part or supposed trading interest of the nation. The number of *English* representatives is 513, and of *Scots* 45, in all 558, and every member, though chosen by one particular district, when elected and returned serves for the whole realm. For the end of his coming thither is not *particular*, but *general*; not barely to advantage his constituents, but the common-wealth; "to advise his majesty (as appears from the writ of summons) for certain and urgent causes concerning us, the good estate and common-wealth of this our realm, and of the church of England." And therefore he is not bound to consult with or take the advice of his constituents upon any particular point, unless he himself thinks it proper, or prudent so to do. 4 *Inst.* 14.

The counties represented by knights, elected by the proprietors of lands. Citizens and burgesses by freemen, &c.

Numbers of representatives.

The end of a member's coming to parliament.

To advise his majesty.

Not bound to consult his constituents.

In order to prevent the mischiefs that might arise by placing this extensive authority in hands that are either incapable, or else improper to manage it, is provided by the custom and law of parliament, that no one shall sit or vote unless he be 21 years of age. 7 & 8 *W.* 3. c. 25. *Whitelocke* c. 50. 4 *Inst.* 47. *Com. Journ.* 16 Dec. 1690. Nor shall an alien naturalized be capable of being a member. 12 & 13 *W.* 3. c. 2. Nor any of the twelve judges. *Com. Journ.* 9 Nov. 1605, because they sit in the Lord's House; nor of the clergy. *Ibid.* 13 Oct. 1533. 8 Feb. 1620. 17 Jan. 1661. for they sit in the convocation; nor persons attainted of treason or felony. *Ibid.* 21 Jan. 1580. 4 *Inst.* 47. for they are unfit to sit any where. Sheriffs, mayors and bailiffs of boroughs, are not eligible in their respective jurisdictions, as

No one to sit or vote unless he be 21.

Nor an alien, tho' naturalized. Nor any of the 12 judges. Nor clergymen.

Nor persons attainted of treason or felony.

Sheriffs, mayors, &c.

being

Persons who have
the management
of duties, &c.

Except commis-
sioners of the
treasury, nor any
of the officers
following.

Knights of shires
to be actual
knights or nota-
ble esquires, such
as have estates.

Knights of shires
to have 600l.
per annum, clear
of freehold or
copyhold.
Citizen and bur-
ges, 300l.

being returning officers. *Bro. Ab. Parliam.* 7. *Cam. J.* 14 April 1614. In strictness all members ought to be inhabitants of the places for which they are chosen, 1 *H. 5. c. 1.* but this is repealed by 14 *Geo. 3. c. 58.* No person concerned in the management of any duties or taxes created since 1692. except commissioners of the treasury 5 & 6 *W. & M. c. 7.* nor any of the officers following, (*viz. commissioners of prizes, transports, sick and wounded, wine licences, navy, and victualling; secretaries or receivers of prizes; comptrollers of the army accounts; agents for regiments; governors of plantations and their deputies; officers of Minorca or Gibraltar; officers of the excise and customs; clerks or deputies in the several offices of the treasury, exchequer, navy, secretaries of state, salt, stamps, appeals, wine licences, hackney coaches, hawkers, and pedlars*) nor any persons that hold any new office under the crown created since 1705. 6 *Ann c. 7. s. 25.* No person having a pension from the crown. *Ibid.* 1 *Geo. 1. c. 56. s. 1.* If any member accepts an office under the crown (except an officer in the army or navy accepting a new commission, his seat is void, but capable of being elected, 6 *Ann c. 7. s. 26. 28.* That all knights of the shire shall be actual knights, or such notable esquires and gentlemen, as have estates sufficient to be knights, and by no means of the degree of yeomen. 23 *H. 6. c. 15. s. 3.*

This now is reduced to a greater certainty, by *stat. 9 Ann c. 5.* by ordaining that every knight of a shire within *England, Wales, and Berwick*, shall have a clear estate, of freehold or copyhold to the value of 600 *l.* citizen and burges, or baron of the cinque ports, to the value of 300 *l.* and any person not so served, though returned, his election void. *s. 1.* (except the eldest sons of peers, and of persons qualified to be knights of shires, and the members of the two universities) *s. 2. 3.* which somewhat ballances the ascendant which the boroughs have gained over the counties, by obliging the trading interest to make choice of landed men, and of this qualifica-
tion

tion the member must make oath, and give in the particulars of his estate in writing, at the time of his taking his seat. 33 Geo. 2. c. 20. sect. 1. otherwise his election to be void. But subject to these standing restrictions and disqualifications, every subject of the realm is eligible of common right: though there are instances, wherein persons in particular circumstances have forfeited that common right; and have been declared ineligible for that parliament, by vote of the House of Commons; or for ever, by an act of the legislature. 7 Geo. 1. c. 28.

Oath must be made of the qualification, and give particulars of his estate in writing, when he takes his seat.

Qualification of the Electors.

THE true reason of requiring any qualification with regard to property, in voters, is to exclude such persons as are in so mean a situation that they are esteemed to have no will of their own. If these persons had votes, they would be tempted to dispose of them under some undue influence or other. This would give a great, an artful, or a wealthy man, a larger share in elections, than is consistent with general liberty.

The reason for requiring a qualification.

By stat. 8 H. 6. c. 7. & 10 H. 6. c. 2. the knights of shires shall be chosen of people dwelling in the same counties, whereof every man shall have freehold, to the value of 40s. by the year, within the county; which (by subsequent statutes) is to be clear of all charges and deductions (except parliamentary and parochial taxes.) These estates must be freehold, that is, for term of life at least. No one under 21. 7 & 8 W. 3. c. 25. s. 8. No person convicted of perjury, or subornation of perjury. 2 Geo. 2. c. 24. s. 6. No person in right of any freehold, granted to him fraudulently to qualify him to vote shall be capable of voting. 10 Ann c. 23. s. 1. Such grants as contain an agreement to re-convey. Every voter who shall have been in the actual possession, or receipt of the profits,

Qualification of voters for knights of shires, to have freehold of 40s. clear of all deductions.

For life at least.

None convicted of perjury.

Nor in right of fraudulent conveyances.

Actual possession or receipt for 12 months.

Except by descent.

Mortgage estates.

Only one person to vote for one house, &c.

No tenant by copy of court roll.

None to vote in respect of messuages, &c. which have not for six months been assessed to land tax.

Not to extend to annuities, &c.

Husbands intitled to dower in right of their wives.

profits, of his freehold to his own use for 12 calendar months before 18 *Geo. 2. c. 18. s. 5.* except it came to him within the time by *descent, marriage, marriage-settlement, will, or promotion to a benefice or office. Ibid.* Nor in respect of an annuity or rent charge, unless registred with the clerk of the peace 12 calendar months before. 3 *Geo. 3. c. 24.*

That in mortgage or trust-estates, the person in possession; under the above restrictions, shall have the vote: 7 & 8 *W. 3. c. 25. s. 7.* That only one person shall be admitted to vote for one house or tenement, to prevent the splitting of freeholds.

That no tenant by copy of court-roll, shall be permitted to vote as a freeholder. 31 *Geo. 2. c. 14. s. 1.*

No person shall vote in respect of messuages; lands or tenements which have not for six months before such election, been assessed towards the land tax, in the name of the voter or his tenant, 20 *Geo. 3. c. 17. s. 1.* but not to extend to annuities, or fee farm rents (duly registred) issuing out of messuages, &c. assessed as aforesaid) nor to persons intitled to such messuages, &c. by *descent, marriage, marriage settlement, devise, benefice, or office, within 12 months before election*; but persons intitled to vote, if messuages, &c. have been within two years next before election, assessed to land tax, in the name of his predecessor or tenant within two years next before election. *s. 2.* The second husband of a woman the widow of tenant in fee, or in fee-tail, who is intitled to dower of the clear value of 40 s. or upwards, altho' not assigned or set out, may vote; if he be in actual receipt of the dower, and the estate whence it issues is rated to the land tax, in the name of the actual owner of the premises. *sect. 12.*

No peer hath a right to vote; and if a man who hath a right to vote for two, gives a single vote, he cannot afterwards give a second for another. 4 *Com. Dig. 288.*

As for the electors of *citizens* and *burgesses* as before said, these are supposed to be the mercantile part or trading interest of this kingdom. But as trade is of a fluctuating nature, and seldom long fixed in a place, it was formerly left to the crown to summon, *pro re nata*, the most flourishing towns to send representatives to parliament. So that as towns increased and grew populous, they were admitted to a share in the legislature. The members for boroughs now bear above a quadruple proportion to those for counties, their numbers being, exclusive of those for *Scotland*. The universities were in general not empowered to send *burgesses* to parliament, but *King James* the First, indulged them with the permanent privilege to send constantly two of their own body; to serve for those students who, though useful members of the community, were neither concerned in the landed, nor the trading interest; and to protect in the legislature the rights of the republic of letters. The right of election in boroughs is various, depending entirely on the several charters, customs, and constitutions of the respective places, which has occasioned infinite disputes; tho' now by statute 2 *Geo.* 2. c. 24. the right of voting for the future shall be allowed according to the last determination of the House of Commons concerning it. And by stat. 3 *Geo.* 3. c. 15. no *freeman* of any city or borough (other than such as claim by birth, marriage or servitude) shall be intitled to vote therein, unless he hath been admitted to his freedom 12 calendar months before. The right of election for the city of *Coventry*, in the freemen having served seven years apprenticeship, not receiving alms, being sworn and inrolled. 21 *Geo.* 3. c. 43.

The next point is, the method of proceeding to election of a member. This is regulated by the law of parliament by several statutes made for that purpose.

As soon as the parliament is summoned, the lord chancellor, (or if a vacancy happens during the

Election of citizens and burgesses.

The right of election in boroughs is various, depending on charters, customs, &c.

As soon as parliament is summoned, chancellor

For sends his warrant to the clerk of the crown, &c. who issues out writs, &c.

the sitting of parliament, the speaker, by order of the house, and without such order, if a vacancy happens by death in the time of a recess for upwards of *twenty days*) sends his warrant to the clerk of the crown in chancery; who thereupon issues out writs to the sheriff of every county and every city and borough therein. Within three days after the receipt of this writ, the sheriff is to send his writ under his seal, to the proper returning officers of the cities and boroughs, commanding them to elect their members: and the said returning officers are to proceed to election within *eight days*, from the receipt of the precept, giving *four days notice of the same*; and to return the persons chosen together with the precept, to the sheriff.

In the borough of New Shoreham. Election in 12 days.

In the borough of *New Shoreham* in *Suffex*, wherein certain freeholders of the county are intitled to vote by stat. 11 *Geo. 3. c. 55.* the election must be within *twelve days*, with *eight days* notice of the same.

Elections for knights of the shire.

But elections for *knights* of the *shire* must be proceeded to by the sheriff in person and he is by stat. 25 *Geo. 3. c. 84. sect. 4.* within two days after receipt of the writ to cause proclamation to be made at the place where the election ought to be holden, of a *special county court*, for the purpose of such election only; on any day (except *Sunday*) not later than the *sixteenth day*, nor sooner than the *tenth day*; and shall proceed to such election at such *special county court*, in the same manner as if the said election was to be held at a county court, or at an adjourned court.

How proceedings were before 25 *Geo. 3.*

Before this statute the sheriff was to proceed at the next county court that should happen after the delivery of the writ, and if the county court fell upon the day of delivery, or within *six days* after, he might adjourn to some other convenient time, not longer than *sixteen days*, nor shorter than *ten*, but not to alter the place without consent of all the candidates; and in all such cases, *ten days public notice* must

must be given of the *time* and *place* of the *election*.
7 & 8 W. 3. c. 23. f. 3.

I shall next state the acts of parliament relative to elections for members from 7 H. 4. to the present period, respecting the duty of the sheriff, and returning officer, and afterwards the return of the writ, and indentures taken thereon.

By stat. 7 H. 4. c. 17. The election of knights of the shire is to be made in the following manner :
“ At the next county court after the delivery of the writ, proclamation is to be made by the sheriff of the county, of the day and place the parliament is to assemble, and that all as are there present shall attend at the election of knights of the shire ; and then in full county, a free and indifferent election shall be made ;” and after they be chosen, the names of the persons shall be written in an indenture under the seals of them that did chuse them, and tacked to the writ, which indenture shall be the return. And in the writs of parliament this clause shall be put : “ and your election in your full county made, you shall without delay distinctly and openly certify under your seal and the seals of them who were concerned in that election to us, in our chancery, at the day and place in the writ contained.”

How election of knights ought to be.

By 1 H. 5. c. 1. the electors and elected for shires, shall be resident within the shire, the day of the date of the writ of summons : and the citizens and burgesses of cities and boroughs shall be chosen men, resident and free in the same : this is disregarded.

Resident in the shire.

By the 23 H. 6. c. 14. “ Every sheriff, after the delivery of any writ to him made, shall make and deliver, without fraud, a sufficient precept under his seal, to every mayor and bailiff, or to bailiffs or bailiff, where no mayor is, of the cities and boroughs within his county, reciting the said writ, commanding them by the same precept, if it be a city, to chuse by citizens of the same city, citizens, and in the same manner and form, if it be a borough, by the burgesses of the

Every sheriff shall within eight days make a precept to every mayor, &c.

S

“ same,

Election of Members.

“ same, to come to the parliament. And that the
 “ same mayor and bailiffs, or bailiffs or bailiff, where
 “ no mayor is, shall return lawfully the precept to the
 “ same sheriffs, by indentures betwixt the same sheriff
 “ and them to be made of the said elections, and of the
 “ names of the said citizens and burgeses by them so
 “ chosen, and thereupon every sheriff shall make a
 “ good and rightful return of every such writ, and of
 “ every return by the mayors and bailiffs, or bailiffs or
 “ bailiff where no mayor is, to him made, in default
 “ forfeits 100 l. with costs to every person chose :
 “ and any mayor and bailiffs, &c. who shall re-
 “ turn other than those which be chosen by the
 “ citizens and burgeses, forfeits to the king 40 l.
 “ and 40 l. to the person chosen. *f. 1.*

Sheriff making
 not due election
 &c.

Every sheriff that maketh not due election of knight in convenient time *viz.* every sheriff in his full county between the hours of *eight and eleven* before noon ; and maketh not true return of such elections, forfeits 100 l. to the king, and 100 l. to him that will sue, his executors, &c. with costs. *f. 2.* so that the knights be able, and not a yeoman.

Writs to be delivered to the proper officer, who is to indorse the day when received, and make out the precept.

By the 7 & 8 W. 3. c. 25. f. 1. “ That as
 “ well upon the calling or summoning any new
 “ parliament, as also in case of any vacancy during this present, or any future parliament, the
 “ several writs shall be delivered to the proper officer to whom the execution thereof doth belong
 “ or appertain, and to no other person whatsoever ;
 “ and that every such officer, upon the receipt of the
 “ same writ, shall upon the back thereof, indorse the
 “ day he received the same, and shall forthwith, upon
 “ receipt of the writ, make out the precept or precepts,
 “ to each borough, town corporate, port, or place within his jurisdiction, where any member or members
 “ are to be elected to serve in such new parliament, or
 “ to supply any vacancy during the present or any future parliament, and within three days after the
 “ receipt of the said writ of election, shall by himself, or proper agent, deliver, or cause to be delivered,
 “ lived,

Precept to be delivered in three days after receipt of the writ.

“livered, such precept or precepts, to the proper
 “officer of every such borough, town corporate,
 “port or place, within his jurisdiction, to whom
 “the execution of such precept doth belong or ap-
 “pertain, and to no other person whatsoever, and
 “every such officer upon the back of the same precept,
 “shall indorse the day of his receipt thereof, in the pre-
 “sence of the party from whom he received such pre-
 “cept, and shall forthwith cause public notice to be given
 “of the time and place of election, and shall proceed
 “to election thereupon, within the space of eight
 “days next after his receipt of the same precept,
 “and give four days notice at least of the day ap-
 “pointed for the election.” *Vide 25 Geo. 3.*
c. 80. s. 4.

Officer to indorse
 the day of the
 receipt, and give
 notice of the
 time of election
 in eight days.

Neither the sheriff or his under-sheriff, nor the
 mayor, bailiff, constable, portreeve or other officer,
 of any borough, &c. to whom the execution of any
 writ or precept for electing members doth belong,
 shall pay or take any fee for the making out, receipt,
 delivery, return, or execution, of any such writ or
 precept. *sect. 2.*

To take no fee
 for return.

Sect. 3. “That upon every election to be made
 “of any knight or knights of the shire, to serve in
 “this present or any future parliament, the sheriff
 “of the county where such election shall be made,
 “shall hold his county court for the same election,
 “at the most public and usual place of election
 “within the said county, and where the same has
 “most usually been for forty years last past, and
 “shall there proceed to election, at the next coun-
 “ty court, unless the same fall out to be held with-
 “in six days after the receipt of the writ, or upon
 “the same day, and then shall adjourn the same
 “court, to some convenient day, giving ten days
 “notice of the time and place of election; and in
 “case the said election be not determined upon the
 “view, with the consent of the freeholders there
 “present, but that a poll shall be required for de-
 “termination thereof, then the said sheriff, or, in
 “his absence, his under-sheriff, with such others

County court to
 be held at the
 usual place, and
 proceed to elec-
 tion, unless it
 fall out in six
 days after receipt
 of the writ.

Sheriff, &c. to
 take the poll, if
 required, and to
 appoint a num-
 ber of clerks.

Name of every
freeholder to be
set down, and for
whom he polls,
and a person for
each candidate
to inspect the
clerks.

Freeholders to be
sworn.

Oath.

“ as shall be deputed by him, shall forthwith there
 “ proceed to take the said poll, in some open or
 “ public place or places, by the same sheriff, or his
 “ under-sheriff, as aforesaid, in his absence, or
 “ others appointed for the taking thereof as afore-
 “ said ; and for the more due and orderly proceed-
 “ ing in the said poll, the said sheriff or in his ab-
 “ sence, his under-sheriff, or such as he shall de-
 “ pute, shall appoint such number of clerks, as to
 “ him shall seem meet and convenient for taking
 “ thereof ; which clerks shall all take the said poll
 “ in the presence of the said sheriff, or his under-
 “ sheriff, or such as he shall depute ; and before
 “ they begin to take the said poll, every clerk so
 “ appointed, shall, by the said sheriff, or his un-
 “ der-sheriff, as aforesaid, be sworn truly and in-
 “ differently to take the same poll, and to set down
 “ the names of each freeholder, and the place of
 “ his freehold, and for whom he shall poll, and to
 “ poll no freeholder who is not sworn, if so re-
 “ quired by the candidates, or any of them ;
 “ (which oath of the said clerks the said sheriff, or
 “ his under-sheriff, or such as he shall depute, are
 “ hereby empowered to administer) and the sheriff,
 “ or in his absence his under-sheriff, as aforesaid,
 “ shall appoint for each candidate such one person
 “ as shall be nominated to him by each candidate,
 “ to be inspectors of every clerk who shall be ap-
 “ pointed for taking the poll ; and every freeholder
 “ before he is admitted to poll at such election,
 “ shall, if required by the candidates, or any of
 “ them, first take the oath herein after-mentioned
 “ (which oath the said sheriff, by himself or his
 “ under-sheriff, or such sworn clerks by him ap-
 “ pointed for taking of the said poll, as aforesaid,
 “ are hereby authorized to administer,” (viz.)

*You shall swear that you are a freeholder for the
 county of _____ and have freehold lands or he-
 reditaments of the yearly value of 40s. lying at
 _____ within the said county of _____ and
 that you have not been before polled at this election.*

Sec7.

Señ. 5. The sheriff, or in his absence his under-sheriff, or such as he shall depute, as aforesaid, shall at the same place of election, proceed to the polling all the freeholders then and there present, and shall not adjourn the county court then and there held, to any other town or place within the same county, without the consent of the candidates, nor shall, by any unnecessary adjournment in the same place of election, protract or delay the election; but shall duly and orderly proceed in the taking of the said poll, from day to day, and time to time, without any further or other adjournment, without the consent of the candidates, until all the freeholders then and there present shall be polled, and no longer.

Sheriff not to adjourn the court, unless the candidates consent.

Señ. 6. Every sheriff, under-sheriff, mayor, bailiff and other officer to whom the execution of any writ or precept shall belong for the electing members to serve in parliament, shall forthwith deliver to such person or persons as shall desire the same, a copy of the poll taken at such election, paying only a reasonable charge for writing the same; and every sheriff, under-sheriff, mayor, bailiff, and other officer, to whom the execution of any writ or precept, for electing of members to serve in parliament, doth belong, for every wilful offence contrary to this act, shall forfeit to every party so aggrieved, the sum of 500*l.* to be recovered by him or them, his or their executors or administrators, together with full costs of suit, and for which he or they may sue by action of debt, bill, plaint, &c.

Copy of the poll to be delivered, if desired, paying for writing.

Penalty on sheriffs, &c. committing wilful offence.

Señ. 10. That the sheriff of the county of *Southampton*, or his deputy, at the request of one or more of the candidates for election of a knight or knights for that county, shall adjourn the poll for *Winchester*, after every freeholder then and there present is polled, to *Newport* in the *Isle of Wight*, for the ease of the inhabitants of the said island, any thing in this act contained to the contrary notwithstanding.

Poll may be adjourned from *Winchester* to *Newport* in the *Isle of Wight*.

Writs to be returned in fourteen days after the election.

Sheriff on return of writ to pay the antient fees, &c.

And charge the same to the king.

Officer of the cinque ports allowed six days from receipt of writ.

Penalty on sheriff, &c. for not making return.

By 10 & 11 W. 3. c. 7. s. 1. it is enacted, That the *sheriff or other officer*, having the execution and return of any writ of summons, which shall be issued for the future, shall, on or before the day that any future parliament shall be called to meet, and with all convenient expedition, not exceeding *fourteen days* after any election made by virtue of any new writ, either in person, or by his deputy, make return of the same to the clerk of the crown in the high court of *Chancery*, to be by him filed; and the sheriff or other person making such return, shall pay the said clerk of the crown the antient and lawful fees of 4s. and no more, for every knight of a shire, and 2s. and no more, for every citizen, burghers, or baron of the cinque ports, returned into the said court, to be by him filed; and the said sheriff or officer, shall, by virtue of this act, charge the same to his majesty, his heirs or successors, and have allowance thereof in his account in the exchequer or elsewhere.

By 7 & 8 W. 3. officer on receipt of writ, shall, within three days after receipt, by himself or proper agent, deliver, or cause to be delivered, a precept or precepts to the proper officer of every borough, town corporate, port or place within his jurisdiction, to whom the execution of such precept doth belong or appertain, which by experience hath been found too short a time for the performance of the same in the *cinque ports*. Be it therefore enacted, That from henceforth, the proper officer of the cinque ports shall be allowed *six days* from the receipt of such writ for the delivery of the precept, according to the purport of the said act; any thing in the said act, or any other law, statute or usage, to the contrary in any wise notwithstanding. s. 2.

Sec. 3. Every sheriff or other officer or officers aforesaid, who shall not make the returns according to the true intent and meaning of this act, shall forfeit for every such offence, the sum of 500l. one moiety thereof shall be to his majesty, and

and the other moiety to him or them that shall sue for the same, to be recovered by action of debt, &c. in any of his majesty's courts of record at Westminster.

By stat. 9 Ann, c. 5. s. 5. Every person (qualified by this act,) who from, and after the determination of this present parliament, shall appear as a candidate, or shall, by himself, or any others, be proposed to be elected to serve as member of the house of commons, for any county, city, borough, or cinque port in *England, Wales, or Berwick upon Tweed*, shall, and he is hereby enjoined and required, upon reasonable request to him to be made (at the time of such election, or before the day to be prefixed in the writ of summons for the meeting of parliament) by any other person who shall stand candidate at such election, or by any two or more persons, having right to vote at such election, take a corporal oath in the form, or to the effect following:

Every candidate, at the request of another candidate, or of two of the voters, shall take the following oath.

" I A. B. do swear, That I truly and bona fide, The oath,
 " have such an estate in law or equity, to and for my
 " own use and benefit, of, or in lands, tenements, or
 " hereditaments, (over and above what will satisfy and
 " clear all incumbrances, that may affect the same) of
 " the annual value of 600*l.* above reprises, as doth
 " qualify me to be elected and returned, to serve as a
 " member for the county of according
 " to the tenor and true meaning of the act of parliament
 " in that behalf; and that my said lands, tenements,
 " or hereditaments, are lying, or being within the
 " parish, township, or precinct of or,
 " in the several parishes, townships or precincts of
 " in the county of or, in the
 " several counties of (as the case may
 " be.")

Sec. 6. And in case such candidate, or person is to serve for any city, borough, or cinque-port, then the said oath shall relate only to the said value of 300*l.* per annum, and be taken to the same effect (*mutatis mutandis*) as is hereby prescribed for

If the candidate be for a city, &c. the oath shall relate only to 300*l.* per annum, *mutatis mutandis*.

Election of Members.

the oath of a person to serve as a member for such county as aforesaid.

The oath to be administered by the sheriff, &c. who shall within three months after the taking thereof, certify the same into the queen's bench or chancery, or forfeit 100*l.* one moiety to the queen, the other to him who will sue, &c. with full costs of suit. Candidate refusing to take the oath, the election to be void.

Stat. 7. That the respective oaths aforesaid, shall, and may be administered by the *sheriff*, or *under-sheriff*, for any such county as aforesaid, or by the *mayor*, *bailiff*, or other *officer* or *officers* for any *city*, *borough*, or *port*, to whom it shall appertain to take the poll, or make the return at such election for the same county, borough or port, respectively, or by any two or more justices of the peace within *England*, *Wales*, and *Berwick upon Tweed*. And the said *sheriff*, *mayor*, *bailiff*, or other *officers*, and the said *justices of the peace respectively*, who shall administer the said oaths, are hereby required to certify the taking thereof into her majesty's high-court of chancery, or the queen's bench, within *three months* after the taking the same, under the penalty of forfeiting the sum of 100*l.* one moiety to the queen, and the other to such person or persons as will sue for the same, to be recovered with full costs of suit by action of debt, bill, plaint or information, in any of her majesty's courts of record at *Westminster*; and if any of the said candidates or persons proposed to be elected, as aforesaid, shall wilfully refuse, upon reasonable request to be made at the time of the election, or at any time before the day upon which such parliament by the writ of summons is to meet, to take the oath hereby required, then the election and return of such candidate or person shall be void. No fee for administering the oath, or making or filing the certificate, except 1*s.* for administering the oath, and 2*s.* making the certificate, 2*s.* for filing, under the penalty of 20*s.* *stat. 2.*

Electors of parliament men to take the following oath, if demanded.

By stat. 2 Geo. 2. c. 24. s. 1. That upon every election of any member or members to serve for the commons in parliament, every freeholder, citizen, freemen, burghers, or person having or claiming a right to vote, or be polled at such election, shall, before he is admitted to poll at the same election, take the following oath, (or being one of the people

people called *Quakers*, shall make the solemn affirmation appointed for *Quakers*,) in case the same shall be demanded by either of the candidates, or any two of the electors, that is to say,

“ I A. B. do swear, (or being one of the people
“ called *Quakers*, I A. B. do solemnly affirm) I have
“ not received, or had by myself, or any person what-
“ soever in trust for me, or for my use and benefit,
“ directly or indirectly, any sum or sums of money, office,
“ place, or employment, gift, or reward, or any pro-
“ mise or security for any money, office, employment, or
“ gift, in order to give my vote at this election, and
“ that I have not before been polled at this election.”

Electors' oath.

Which oath or affirmation, the officer or officers presiding, or taking the poll at such election, is, and are hereby impowered and required to administer *gratis*, if demanded, as aforesaid, upon pain to forfeit the sum of 50*l.* to any person that shall sue for the same, to be recovered, together with full costs of suit, by action of debt, bill, plaint, or information, in any of his majesty's courts of record at *Westminster*, &c. And, if the said offence shall be committed in that part of *Great Britain* called *Scotland*, then to be recovered, together with full costs of suit, by summary action, or complaint before the Court of Session, or by prosecution before the Court of Justiciary there, for every neglect or refusal so to do; and no person shall be admitted to poll, till he has taken and repeated the said oath, in a public manner, in case the same shall be demanded, as aforesaid, before the returning officer, or such others as shall be legally deputed by him.

Presiding officer to administer it, on forfeiture of 50*l.*

Sec. 2. That if any *sheriff*, *mayor*, *bailiff*, or other *returning officer*, shall admit any person to be polled, without taking such oath or affirmation, if demanded, as aforesaid, such *returning officer* shall forfeit the sum of 100*l.* to be recovered in manner aforesaid, together with full costs of suits; and that if any person shall vote or poll at such election, without having first taken the oath, or, if a

Quaker,
Sheriff or other returning officer, admitting any to be polled, before sworn, to forfeit 100*l.*

Election of Members.

Voters to incur the penalty. *Quaker*, having made his affirmation, as aforesaid, if demanded, such person shall incur the same penalty, which the officer is subject to for the offence above mentioned.

Returning officer after reading the writ, to take the following oath. *Sect. 3.* That every *sheriff, mayor, bailiff, head-borough, or other person*, being the returning officer of any member to serve in parliament, shall, immediately after reading the writ or precept for the election of such member, take and subscribe the following oath, *viz.*

The oath.

" I A. B. do solemnly swear, that I have not directly nor indirectly, received any sum or sums of money, office, place, or employment, gratuity or reward, or any bond, bill, or note, or any promise or gratuity whatsoever, either by myself, or any other person to my use or benefit, or advantage, for making any return at the present election of members to serve in parliament; and that I will return such person or persons, as shall, to the best of my judgment, appear to me to have the majority of legal votes." Repealed as to Scotland, by 16 Geo. 2. c. 11. s. 18.

Justice of peace may administer the oath.

Which oath, any justice or justices of the peace of the said county, city, corporation, or borough, where such election shall be made, or in his or their absence, any three of the electors, are hereby required and authorised to administer; and such oath so taken, shall be entered among the records of the sessions of such county, city, corporation, and borough, as aforesaid.

Penalty of wilful perjury.

Sect. 5. That if any returning officer, elector, or person taking the oath or affirmation herein before mentioned, shall be guilty of wilful and corrupt perjury, or of false affirming, and be thereof convicted by due course of law, shall incur and suffer the pains and penalties, which by law are enacted or inflicted in cases of wilful and corrupt perjury.

Persons convicted, never permitted to vote.

Sect. 6. That no person convicted of wilful and corrupt perjury, or subornation of perjury, shall, after such conviction, be capable of voting in any election

election of any member or members to serve in parliament.

Sect. 9. That all *sheriffs, mayors, bailiffs, and other officers*, to whom the execution of any writ or precept, for electing any member or members to serve in parliament, shall belong or appertain, shall, and are hereby required, at the time of such election, immediately after reading such writ or precept, read, or cause to be read, openly before the electors there assembled, this present act, and every clause therein contained; and the same shall also openly be read once in every year at the general quarter sessions of the peace, to be holden next after *Easter*, for any county or city, and at every election of the chief magistrate in any *borough, town corporate, or cinque-port*, and at the annual election of magistrates, and town counsellors for every borough within that part of *Great Britain* called *Scotland*.

The act to be read by the sheriff, &c. after reading the writ.

Sect. 10. That every *sheriff, under-sheriff, mayor, bailiff, and other officer*, to whom the execution of any writ or precept for the electing of members to serve in parliament doth belong, for every wilful offence, contrary to this act, shall forfeit the sum of 50*l.* to be recovered, together with full costs of suit, in the manner before directed.

Every sheriff, &c. shall for wilful offence, forfeit 50*l.*

By stat. 18 Geo. 2. c. 18. s. 1. Upon every election, to be made within that part of *Great Britain* called *England*, or dominion of *Wales*, of any knight or knights of the shire to serve in parliament, every freeholder, instead of the oath or affirmation, prescribed to be taken by an act of parliament made in the 10th year of the reign of her late majesty queen *Ann*, intituled, *An act for the more effectual preventing fraudulent conveyances, in order to multiply votes for electing knights of shires to serve in parliament*, before he is addmitted to poll at the said election, shall, (if required by the candidates, or any of them, or any other person having a right to vote at the said election) first take the

Instead of the oath by 10 of *Ann*, c. 23. another is appointed for freeholders.

Election of Members.

The oath.

the oath (or, being one of the people called Quakers,) the solemn affirmation following, viz.

" You shall swear (or being one of the people called Quakers, you shall solemnly affirm) that you are a freeholder in the county of _____ and have a freehold estate, consisting of _____ (specifying the nature of such freehold estate, whether messuage, land, rent, tythe, or what else ; and if such freehold estate consists in messuages, lands, or tythes, then specifying in whose occupation the same are ; and if in rent, then specifying the names of the owners or possessors of the lands or tenements, out of which such rent is issuing, or of some or one of them) lying or being at _____ in the county of _____ of the clear yearly value of 40 s. over and above all rents and charges payable out of, or in respect of the same ; and that you have been in the actual possession or receipt of the rents and profits thereof, for your own use, above 12 calendar months, or that the same came to you, within the time aforesaid, by descent, marriage, marriage-settlement, devise or promotion to a benefice in a church, or by promotion to an office ; and that such freehold estate has not been granted or made to you fraudulently, on purpose to qualify you to give your vote, and that your place of abode is at _____ in _____ and that you are 21 years of age, as you believe ; and that you have not been polled before at this election."

Which oath sheriff, under-sheriff, or clerks shall administer.

Which oath (or solemn affirmation) the sheriff by himself, his under-sheriff, or such sworn clerk or clerks, as shall be by him appointed for the taking of the poll, is hereby required to administer. And in case any freeholder or other person taking the said oath or affirmation hereby appointed, shall thereby commit wilful perjury, and be thereof convicted ; and if any person do unlawfully and corruptly procure or suborne any freeholder, or other person, to take the said oath or affirmation, in order to be polled, whereby he shall commit such wilful perjury, and shall be thereof convicted, he and they, for every such offence, shall incur such pains and penalties as are in and by two acts of

parliament, the one made in the fifth year of the reign of the late queen *Elizabeth*, intituled, *An act for punishing such persons as shall procure or commit wilful perjury, or suborne or procure any person to commit any wilful or corrupt perjury*; the other made in the second year of his present majesty, intituled, *An act for the more effectual preventing and further punishment of forgery, perjury, and subornation of perjury; and to make it felony to steal bonds, notes, or other securities for payment of money, contrary to the said acts.*

Sect. 7. That from the 24th day of June, 1745, at every election within that part of *Great Britain* called *England* and *Dominion of Wales*, the *sheriff*, or in his absence, the *under-sheriff*, or such as he shall *depute*, shall appoint, make, or erect, or cause to be appointed, made, or erected, at the expence of the candidates, such number of convenient booths or places for taking the poll, as the candidates, or any of them shall, *three days* at least before the commencement of the poll, desire, so as the same do not exceed the number of rapes, lathes, wapentakes, wards, or hundreds within the said county, and not exceeding in the whole the number of *fifteen*; and shall affix or cause to be affixed, on the most public part of each of the said booths or polling places, the name or names of the rape, wapentake, lathe, ward or hundred, or rapes, &c. for which such booth or polling place is allotted or designed; and the said *sheriff*, *under-sheriff* or such person as he shall *depute*, shall appoint a proper clerk or clerks at each of the said booths or polling places to take the poll (which said clerk or clerks shall be at the expence of the candidates, and be paid not exceeding one guinea *per day* each clerk) and the said *sheriff* or *under-sheriff*, shall also make out a list for each of the said booths or polling places respectively, of all the several towns, villages, parishes, and hamlets, lying or being wholly or in part in the rape, wapentake, lathe, ward, or hundred, or in the several rapes, wapentakes, lathes, wards, or hundreds, for which

Booths to be erected at the expence of the candidates for taking polls.

Proportioned to the hundreds, &c. and not exceeding fifteen.

Sheriff to appoint a clerk at each booth for polling at the candidates expence.

List of towns, &c. for each booth.

Of which list copies to be given at 2 s. each.

Voting at each booth, to be regulated by the list.

Exception.

A cheque book for every poll book allowed each candidate.

No sheriff to adjourn a county court for longer than 16 days.

which such booth or polling place is allotted or designed, and shall, upon request made, deliver a true copy thereof to any of the candidates, or their agents, who shall desire the same, taking for each of the said copies the sum of *two shillings* and no more.

Seet. 8. That no sheriff, under-sheriff, or clerk appointed to take the poll at any of the said booths, or polling places, shall admit any person to vote for any lands, tenements, or other freehold estate, sworn by the said oath to be lying and being at some parish, town or place, or parishes, towns, or places, which parish, town, or place, or parishes, towns, or places, or any of them, or any part of them, is not, or are not mentioned in the said list so made out for such booth or polling places as aforesaid, unless such lands, tenements, or estate lye or be in some town, liberty, or place not mentioned in any of the lists so made out for all the said booths or polling places as aforesaid.

Seet. 9. That the *sheriff* or in his absence the *under-sheriff*, or such as he shall *depute*, shall, at every such election, allow a cheque-book, for every poll-book, for each candidate, to be kept by their respective inspectors, at every place where the poll or such election shall be taken or carried on.

Seet. 10. And whereas by an act made in the 7th & 8th years of *William the Third*, intituled, "*An act for the further regulating elections of members to serve in parliament; and for preventing irregular proceedings of sheriffs, and other officers, in electing and returning such members;*" it is enacted, That upon every election to be made of any knight or knights of the shire, the *sheriff* of the county where such election shall be made, shall *proceed to election at the next county court*, unless the same fall out to be held *within six days after the receipt of the writ, or upon the same day*, and then shall adjourn the same court to some convenient day, giving *ten days* notice of the time and place of election. And whereas sheriffs have frequently in such cases, where the county court fell out to be held within *six days after*

ter

ter the receipt of the writ, or upon the same day, made long adjournments of the same, in order to delay proceeding to election; for remedy thereof for the future, it is enacted, "That from the said 24th day of June, no sheriff shall in such case, take upon himself to adjourn such court for longer than sixteen days; any thing to the contrary notwithstanding."

Adjournment of the county court.

6 Geo. 2. c. 23. s. 1. is repealed by this act. s. 21. Sheriff, &c. offending, to be prosecuted.

Sect. 12. That in case any such sheriff, or under-sheriff, who shall preside at any election of any such knight or knights of the shire, within that part of Great Britain called England, or Dominion of Wales, shall wilfully offend against, or act contrary to the true intent and meaning of this act, every such sheriff or under-sheriff, shall be liable to be prosecuted by information or indictment, in his majesty's court of King's Bench at Westminster, or in the court of Great Sessions in the principality of Wales, or at the sessions held for the counties palatine of Chester, Lancaster, and Durham, or at the assizes for the county, city, town, or place, where such offence shall be committed, in which no *noli prosequi* or *cessat processus* shall be granted.

No *noli prosequi* or *cessat processus* to be granted.

By 19 Geo. 2. c. 28. s. 1. it is enacted, that from and after the 24th day of June, 1746, every person demanding to vote for the election of any member to serve in parliament for such city or town, being a county of itself, in that part of Great Britain, called England, for and in respect of any freehold estate of 40s. a year, shall, before he is admitted to poll at the said election (if required by the candidates, or any of them, or any person having a right to vote at the said election) first take the oath (or being a Quaker) the solemn affirmation) following, viz.

Persons demanding to vote for the election of members,

if required to take the oath following, &c.

"YOU shall swear, (or, being a Quaker, you shall solemnly affirm) that you have a freehold estate, consisting of (specifying the nature of such freehold estate, whether messuage, land, rent, tythe, or what else; and if such freehold estate consists in messuages,

The oath.

“ messuages, lands, or tithes, then specifying in whose
 “ occupation the same are ; and if rent, then specifying
 “ the names of the owners or possessors of the lands
 “ or tenements, out of which such rent is issuing, or
 “ of some or one of them) lying or being in the city and
 “ county, or town and county (as the case may be) of
 “ of the clear yearly value of 40s.
 “ over and above all rents and charges payable out of,
 “ or in respect of the same ; and that you have been in
 “ the actual possession or receipt of the rents and profits
 “ thereof, for your own use, above 12 calendar
 “ months ; or that the same came to you within the
 “ time aforesaid, by descent, marriage, marriage settlement,
 “ devise, or promotion to a benefice in a church, or by promotion
 “ to an office ; and that such freehold estate has not been
 “ granted or made to you fraudulently, on purpose to qualify
 “ you to give your vote ; and that the place of your abode is at
 “ in and that you
 “ are 21 years of age, as you believe ; and that you
 “ have not been polled before at this election.”

The oath, &c.
 by whom to be
 administered.

Wilful perjury,
 and subornation
 of perjury, to be
 punished as the
 acts of 5 Eliz. 2
 Geo. 2. direct.

Sheriffs to allow
 a cheque book
 for every poll
 book.

Which oath (or solemn affirmation) the sheriff or sheriffs, by him or themselves, or his or their under-sheriff, or under-sheriffs, or such sworn clerk or clerks, as shall be by him or them appointed for the taking of the poll, is and are hereby required to administer ; and in case any freeholder or other person, taking the said oath or affirmation hereby appointed, shall thereby commit wilful perjury, and be thereof convicted ; and if any person do unlawfully and corruptly procure or suborne any freeholder, or other person, to take the said oath or affirmation, in order to be polled, whereby he shall commit such wilful perjury, and shall be thereof convicted, he and they, for every such offence, shall incur such pains and penalties, as are mentioned in stat. 5 Eliz. and 2 Geo. 2.

That the sheriff or sheriffs of any city or town, being a county of itself, in that part of Great Britain, called England, or in his or their absence, his or their under-sheriff, or under-sheriffs, or such other

other person as he or they shall depute, shall, at every election of any member or members to serve in parliament for such city or town, allow a cheque book for every poll book for each candidate, to be kept by their respective inspectors; at the place where the poll for such election shall be taken or carried on. *f. 6.*

That from and after the said 24th of *June*, 1746, the sheriff or sheriffs of every city or town, being a county of itself, and having a right to elect a member or members of parliament, by virtue of the writ issuing out of chancery, without any precept thereupon, within that part of *Great Britain*, called *England*, shall forthwith, upon the receipt of the writ for election of a member or members to serve in parliament for such city or town, cause public notice to be given of the time and place of election, and shall proceed to election thereupon, within the space of eight days next after that of his receipt of the said writ, and give three days notice thereof, at least, exclusive of the day of the receipt of the writ, and of the day of election.

Sheriffs to give public notice, &c.

and to proceed to election within 8 days after receipt of the writ.

f. 7.

That in case any sheriff or under-sheriff, presiding at any election of a member or members to serve in parliament for any such city or town, being a county of itself, as aforesaid, within that part of *Great Britain* called *England*, shall wilfully offend against, or act contrary to the true intent and meaning of this act, every such sheriff or under-sheriff shall be liable to be prosecuted by information or indictment in his majesty's court of king's bench at *Westminster*, or at the assizes for the city or town where such offence shall be committed, in which no *noli prosequi*, or *cessat processus* shall be granted; any law, custom, or usage to the contrary thereof in any wise notwithstanding.

Sheriffs offending against this act,

may be prosecuted in the king's bench, &c.

f. 8.

That every action, suit, indictment or information given by this act, shall be commenced within the space of nine calendar months, after the fact

Suits to be commenced within 9 months.

T

upon

Election of Members.

upon which the same is grounded shall have been committed.

Statutes of jeofails to be allowed.

That all the statutes of jeofails, and amendments of the law whatsoever, shall and be construed to extend to all proceedings in any action, suit, indictment, or information given or allowed by this act, or which shall be brought in pursuance thereof.

Plaintiff discontinuing his suit, &c. shall suffer treble costs.

That in case the plaintiff or informer, in any action, suit, indictment, or information given by this act, shall discontinue the same, or be nonsuited, or judgment be otherwise given against him; then, and in any of the said cases, the defendant against whom such action, suit, or information shall have been brought, shall recover his treble costs.

Limitation of this act.

Provided always, that this act, or any thing therein contained (other than and except such clauses and provisions as are by this act made for or concerning allowing cheque books, or for or concerning notice to be given of the time and place of election, and proceeding to election thereupon) shall not extend, or be construed to extend, to any city or town, being a county of itself, or to any person or persons where the right of voting for any member or members of any such city or town is, for or in respect of burgage tenure, or where the right of voting for such member or members, for or in respect of a freehold, does not require the same to be of the yearly value of 40s.

Penalty of antedating the admission of any freeman, 500 l.

By stat. 3 Geo. 3. c. 15. It is enacted, that if any mayor, bailiff, sheriff, town clerk, or other officer of any corporation, or other person whatsoever, shall wilfully and fraudulently antedate, or cause to be antedated, any admission of any freeman, such mayor, bailiff, sheriff, town clerk, officer, or other person, shall, for every such offence, forfeit and pay the sum of 500 l. to him, her, or them, who shall inform and sue for the same. s. 2.

The books and papers of admission of freemen to be open to in-

That the mayor, bailiff, sheriff, town clerk, or other officer of any corporation, having the custody of, or power over, the records of the same, shall,

shall, upon the demand of any candidate, or his agent, or any two freemen, on the payment of 1s. permit such candidate, agent, or freemen, between the hours of nine in the morning and three in the afternoon, at any time before, and within one month after, any such election as aforesaid, to inspect the books and papers wherein the admission of freemen shall be entered; and to have copies or minutes of the admission of so many freemen as such candidate, agent, or freemen, shall think fit, upon paying to such mayor, bailiff, sheriff, town clerk, or other officer, a reasonable charge for writing the same; and such books and papers shall, if demanded by such candidate, agent, or freemen, be produced by such mayor, bailiff, sheriff, town clerk, or other officer, at every election, and be referred to, in case any dispute shall arise touching the right of any person to give his vote thereat: and if such mayor, bailiff, sheriff, town clerk, or other officer, shall refuse or deny such candidate, agent, or freemen, the inspection of such books and papers, or to have copies or minutes thereof, or shall refuse or neglect to produce such books and papers at any election, if demanded and paid for in the manner herein before set forth, such mayor, bailiff, sheriff, town clerk, or other officer, shall, for every such offence, forfeit and pay the sum of 100*l.* to him, her, or them, who shall inform and sue for the same, and that all forfeitures or penalties laid or imposed by this act, shall be recovered, with full costs of suit, by action of debt, bill, plaint, or information, in any of his majesty's courts of record at *Westminster*, wherein no essoin, protection, wager of law, or more than one imparlance, shall be allowed. *f.*

specification, upon demand of a candidate, his agent, or two freemen, upon payment of 1s.

and copies, and minutes of the admissions to be given, paying reasonably for writing the same;

and the books, &c, to be produced, if demanded, at every election,

on penalty of 100*l.*

The penalties may be recovered, with full costs of suit;

3, 4.

That no person shall be liable to any forfeiture or penalty by this act laid or imposed, unless prosecution be commenced within *one year* after such forfeiture or penalty shall be incurred. *f.* 5.

Provided the prosecution be commenced within a year.

T 2

That

This act to be openly read by the returning officer, at all elections by freemen, immediately after act 2 Geo. 2.

This act not to extend to London or Norwich.

No person may vote in elections of knights of the shire, or of members for cities and towns which are counties of themselves, in right of any annuity or rent charge granted before first June, 1763, unless a certificate be entered with the clerk of the peace, or other proper officer, twelve months before any such election begins.

Oath.

That the returning officer shall read, or cause to be read, openly, this act, at the time of election of members to serve in parliament for cities, towns, ports, or boroughs, where the right of election is in the whole, or in part, in freemen as aforesaid, immediately after the reading of the act passed in the second year of his late majesty's reign, intituled, An act for the more effectual preventing bribery and corruption in the elections of members to serve in parliament; and that nothing in this act shall extend, or be construed to extend, to the cities of *London* or *Norwich*.

By stat. 3 Geo. 3. c. 24. it is enacted, That after the first day of *August*, 1764, no person shall vote for electing any knight or knights of a shire, citizen or citizens, burgess or burgesses, of any such city or town for that part of *Great Britain* called *England*, for, or in respect of any annuity, or rent charge issuing out of freehold lands or tenements, and granted before the first day of *June*, 1763, unless a certificate, upon oath, shall have been entered twelve calendar months, at least, before the first day of such election, with the clerk of the peace for the county, riding, or division, or with the clerk of the peace, town clerk, or other public officer, having the custody of the records within such city or town where such lands or tenements do lie, as follows, (that is to say,)

" I A. B. of *am really and bona fide*
 " seized of an annuity or rent charge, for my own use
 " and benefit, of the clear yearly value of 40s. above
 " all rents and charges payable out of the same, wholly
 " issuing out of freehold lands, tenements, or heredita-
 " ments, belonging to C. D. of *situate,*
 " lying, and being, in the parish, township, or place,
 " or in the parishes, townships, or places, of E. in the
 " county of *without any trust, agree-*
 " ment, matter, or thing, to the contrary notwith-
 " standing; and I, or the person or persons under whom
 " I claim, was, or were seized of the said annuity
 " or rent charge, before the first day of *June*, 1763.
 " That

That no person shall vote for the electing any knight or knights of a shire, or for a citizen or citizens, burghers or burgesses, of any such city or town, for that part of *Great Britain* called *England*, in respect of any annuity or rent charge, issuing out of freehold lands, tenements, or hereditaments, which shall come to such person by descent, marriage, marriage settlement, devise, or presentation to a benefice in a church, or promotion to an office, within twelve calendar months next before such election respectively, unless a certificate upon oath, or affirmation if a *Quaker*, shall have been entered with the clerk of the peace, town clerk, or other officer as aforesaid, before the first day of such election, as follows; that is to say,

And in like manner with respect to such qualifications as shall come by descent, marriage, devise, presentation, or promotion.

" I A. B. of am really and bona fide seized of Oath.
 " an annuity or rent charge, to my own use and benefit,
 " of the clear yearly value of 40 s. a year, above all
 " rents and charges payable out of the same, wholly
 " issuing out of freehold lands, tenements, or heredita-
 " ments, belonging to C. D. of situate,
 " lying, and being in the parish, township, or place,
 " or in the parishes, townships, or places, of
 " in the county of without any trust,
 " agreement, matter, or thing, to the contrary notwith-
 " standing; and I became seized of the said annuity or
 " rent charge, on the day of
 " last past, by descent or otherwise (as the case may
 " happen.)"

That, if any clerk of the peace, town clerk, or other officer as aforesaid, shall be guilty of any wilful neglect, misdemeanor, or fraudulent practice, contrary to the true intent and meaning of this act, every such clerk of the peace, town clerk, or other officer as aforesaid, shall, for every such offence, forfeit 100 l. to the person who shall sue for the same, by action of debt, bill, &c.

Officer guilty of any neglect or misdemeanor, forfeits 100 l.

That no person shall be liable to any forfeiture or penalty by this act, laid or imposed, unless

Limitation of prosecution.

prosecution be commenced within twelve months after such forfeiture or penalty shall be incurred.

Poll to begin, at latest, the day after demanded,

unless Sunday,

and must continue but 15 days.

Return to be made at the close of the poll, or day after,

unless scrutiny demanded,

Regulations for making returns, in case of a scrutiny.

By stat. 25 Geo. 3. c. 84. For the better regulation of polls and scrutinies, be it enacted, " That
 " from and after the first day of *August*, 1785,
 " every poll which shall be demanded at any
 " election for a member or members to serve in
 " parliament, for any county, city, borough, or
 " other place, within *England*, *Wales*, or for the
 " town of *Berwick upon Tweed*, shall commence
 " on the day upon which the same shall be de-
 " manded, or upon the next day at farthest,
 " (unless it shall happen to be on a *Sunday*, and
 " then on the day after;) and shall be duly and
 " regularly proceeded in from day to day, (*Sun-
 " days excepted*;) until the same be finished; but so
 " as that no poll for the election of any member
 " or members to serve in parliament, shall con-
 " tinue more than fifteen days at most, (*Sundays
 " excepted*;) and, if such poll shall continue until
 " the *fifteenth day*, then the same shall be finally
 " closed, at, or before the hour of *three* in the
 " afternoon of the same day; and the returning
 " officer or officers, at every such election, shall
 " immediately, or on the day next after the final
 " close of the poll, truly, fairly, and publickly,
 " declare the name or names of the person or per-
 " sons who have the majority of votes on such
 " poll, and shall forthwith make a return of such
 " person or persons, unless the returning officer or
 " officers, upon a scrutiny being demanded by
 " any candidate, or any two or more electors, shall
 " deem it necessary to grant the same; in which
 " case, it shall, and may be lawful for him so to
 " do, and to proceed thereupon, but so as that in
 " all cases of a general election, every returning
 " officer or officers, having the return of a writ,
 " shall cause a return of a member or members,
 " to be filed in the crown office, *on, or before the
 " day on which such writ is returnable*; and every
 " other returning officer or officers, acting under

" a

“ a precept or mandate, shall make a return of a
 “ member or members, in obedience to such pre-
 “ cept or mandate, at least *six days* before the day
 “ of the *return* of the *writ*, by virtue of which
 “ such election has been made; and so, that in
 “ case of any election, upon a writ issued during
 “ a session or prorogation of parliament, and a
 “ scrutiny being granted as aforesaid, then that a
 “ return of a member or members shall be made
 “ within *thirty days after the close of the poll*, (or
 “ sooner, if the same can conveniently be done.)”

Sect. 2. “ That whenever a scrutiny shall be
 “ granted as aforesaid, and there shall be more
 “ parties than one objecting to votes on such
 “ scrutiny, the returning officer, or returning
 “ officers, shall decide alternately or by turns, on
 “ the votes given for the different candidates who
 “ shall be parties to such scrutiny, or against
 “ whom the same shall be carried on.”

Objections to
 voters to be de-
 cided alternately.

Sect. 3. And, in order that electors may have
 full time and opportunity to poll, be it enacted,
 “ That all, and every returning officer and officers,
 “ unless prevented by any unavoidable accident,
 “ shall, during the continuance of the poll, on
 “ every day subsequent to the commencement of
 “ the same, cause the said poll to be kept open
 “ for seven hours at the least, in each day, between
 “ the hours of eight in the morning, and eight
 “ at night.”

Poll to be kept
 open seven hours
 daily.

Sect. 4. And whereas, inconveniences may
 arise from the time allowed by the laws now in
 being, for proceeding to an election of a knight or
 knights, to serve in parliament, for any county
 or shire in *England* or *Wales*; be it enacted,
 “ That, immediately after the receipt of the writ
 “ for making any such election, and indorsing on
 “ the back thereof, the day of receiving the same,
 “ as by law required; it shall, and may be lawful
 “ for the *sheriff* of such *county* or *shire*; and he is
 “ hereby required, within *two days after the receipt*
 “ *thereof*, to cause proclamation to be made at the
 “ place

Within two days
 after receipt of
 the writ, procla-
 mation to be
 made of the elec-
 tion,

Election of Members.

which must begin between 10th and 16th day after proclamation.

Provided the usual adjournment of the court take place.

An oath to be taken previous to polling.

“ place where the ensuing election ought by law
 “ to be holden, of a special county court, to be
 “ there holden, for the purpose of such election
 “ only, on any day, (*Sunday* excepted,) not later
 “ from the day of making such declaration, than
 “ the *sixteenth day*, nor sooner than the *tenth day*;
 “ and that he shall proceed in such election, at
 “ such special county court, in the same manner,
 “ as if the said election was to be held at a county
 “ court, or at an adjourned county court, accord-
 “ ing to the laws now in being; provided always,
 “ That the usual county court for all other pur-
 “ poses, or any adjournment made thereof, shall
 “ take place, be held, and proceeded in, by the
 “ sheriff, or his deputy, and may from time to
 “ time be further adjourned and proceeded in, in
 “ such and the same manner, and at the same
 “ times and places, as if the writ for the election
 “ of a knight or knights of the shire had not been
 “ received.”

Secl. 5. And whereas, although from the various and disputed rights of voting in several cities, boroughs, and other places; a positive oath of qualification cannot be required from the electors; yet, it is apprehended, that unqualified persons may be deterred from polling at such elections, under fictitious names or otherwise, by requiring from the electors previous to their polling, the oath or affirmation herein after mentioned; be it therefore further enacted, “ That from, and after
 “ the said first day of *August*, 1785, upon every
 “ election to be made, within that part of *Great*
 “ *Britain* called *England* or *Wales*, or town of
 “ *Berwick upon Tweed*, of any other member or
 “ members to serve in parliament, in all cases
 “ where no oath or affirmation of qualification,
 “ other than the oaths or affirmations against
 “ bribery, or of allegiance, supremacy, and ab-
 “ juration, can now by law be required; every
 “ person claiming to give his vote at the said
 “ election, shall, (if required by any candidate,
 “ or

“ or any person having a right to vote at such
“ election,) before he is admitted to poll, take the
“ oath, (or, being one of the people called
“ Quakers, make the solemn affirmation) follow-
“ ing; (that is to say,)

“ I do swear, (or being a Quaker, do affirm,) Oath,
“ That my name is A. B. and that I am
“ (specifying the addition, profession, or trade of such
“ person,) and that the place of my abode is at
“ in the county of (and if it is a town
“ consisting of more streets than one, specifying what
“ street;) and that I have not before polled at this
“ election; and that I verily believe myself to be of the
“ full age of twenty-one years.”

“ Which oath, or solemn affirmation, the re-
“ turning officer or officers at such election, and
“ his or their deputies and poll clerks, is or are
“ hereby authorized and required to administer.”

Sec. 6. “ That, from and after the first day of
“ August, 1785, upon every election of any mem-
“ ber or members to serve in parliament for any
“ county, city, borough, or place, within *England*
“ or *Wales*, or for *Berwick upon Tweed*, it shall and
“ may be lawful for the returning officer or officers,
“ if he or they see cause, and he and they are in
“ such case authorized, during the continuance of
“ any scrutiny which shall have been granted as
“ aforesaid, to administer an oath to any person
“ whatsoever consenting to take the same, touch-
“ ing the right of any person having voted at such
“ election, or touching any other matter or thing
“ material or necessary towards carrying on such
“ scrutiny.”

Returning offi-
cers authorized
to administer
oaths during a
scrutiny.

Sec. 7. “ That from and after the said 1st day
“ of August, 1785, at every election of any member
“ or members of parliament for any city, borough
“ or other place, within *England* or *Wales*, or town
“ of *Berwick upon Tweed*, every person whom the
“ returning officer or officers shall retain to act as
“ a clerk in taking the poll shall, before beginning
“ to take such poll, be sworn by such returning
“ officer

Poll clerks to
take an oath for
the faithful dis-
charge of their
duty.

Persons taking,
or suborning
others to take a
false oath, liable
to the pains in-
flicted by 5 Eliz.
cap. 9. and 2
Geo. 2. cap. 25.

Not to extend to
places where par-
ticular regula-
tions have been
enacted by statute.

“ officer or officers, truly and indifferently to take
“ the said poll, and to set down the *name of each*
“ *voter, and his addition, profession or trade, and the*
“ *place of his abode, and for whom he shall poll, and to*
“ *poll no person who is not sworn or put to his affirma-*
“ *tion, whereby this or any other statute, any oath*
“ *or affirmation now is, or hereafter shall be re-*
“ *quired ; which oath of every such poll clerk the*
“ *said returning officer or officers is or are hereby*
“ *authorized and required to administer.*”

Sect. 8. “ That if any person, in taking any
“ oath or affirmation herein before appointed, or
“ authorized to be taken before any returning
“ officer or officers, shall thereby commit wilful
“ perjury, and be thereof convicted ; or if any per-
“ son shall unlawfully and corruptly procure or
“ suborne any other person to take any such oath or
“ affirmation, whereby he or she shall commit such
“ wilful perjury, and shall be thereof convicted,
“ he or she so offending shall incur such pains and
“ penalties as are inflicted in and by two acts of
“ parliament, the one made in the fifth year of the
“ reign of the late Queen *Elizabeth*, (intituled, *An*
“ *act for punishment of such person as shall procure or*
“ *commit any wilful perjury ;*) the other made in the
“ second year of his late majesty King *George* the
“ Second, (intituled, *An act for the more effectual*
“ *preventing, and further punishment of forgery, per-*
“ *jury, and subornation of perjury ; and to make it se-*
“ *lonly to steal bonds, notes, or other securities for pay-*
“ *ment of money,*) for any perjury or subornation of
“ perjury contrary to the said acts.”

Sect. 9. Provided, “ That nothing in this act
“ before contained shall extend to, or in anywise
“ affect, alter, or regulate the mode or time of pro-
“ ceeding at any election of any member or mem-
“ bers for any place where particular regulations,
“ touching the duration of polls and scrutinies,
“ are specially enacted by statute, but that every
“ such election shall be begun and carried on in
“ the same manner as if this act had not been
“ made.” *Sect.*

Sec. 10. " That from and after the 1st day of
 " *August, 1785*, if upon any writ or writs to be
 " issued for the election of any member or members
 " to serve in parliament, *no return* shall be made to
 " the same *on or before the day on which such writ is*
 " *made returnable*; or if a writ shall have been is-
 " sued during any session or prorogation of parlia-
 " ment, and no return shall be made to the same
 " within *fifty two days after the day on which such*
 " *writ bears date*; or if the return made in either
 " of such cases shall not be a *return of a member or*
 " *members*, according to the requisition thereof, but
 " contain special matters only concerning such
 " election; it shall and may be lawful for any per-
 " son or persons, having had, or claiming to have
 " had, a right to vote at such election, or claim-
 " ing to have had a right to be returned as duly
 " elected thereat, who shall think himself or them-
 " selves aggrieved, to petition the house of com-
 " mons concerning the same; and upon such peti-
 " tion being presented, a day and hour shall be ap-
 " pointed for taking the same into consideration,
 " and notice thereof in writing shall be forthwith
 " given by the speaker to the petitioners, and to
 " the returning officer or officers by whom such re-
 " turn ought to have been made, or shall have
 " been made, accompanied with an order to him
 " or them to attend the house at the time appoint-
 " ed, by himself or themselves, his or their counsel
 " or agents; and a select committee shall be ap-
 " pointed, according to the directions of the said
 " two recited acts, for regulating the trial of con-
 " troverted elections; which committee shall try
 " and determine whether any, and which of the
 " person or persons named in such petition ought
 " to have been returned, or whether a new writ
 " ought to issue; which determination shall be
 " final to all intents and purposes; and the house
 " being informed thereof by the chairman of the
 " said select committee, shall order the same to be
 " entered in their journals, and give the necessary
 " directions

When returns
have not been
duly made, a
select committee
may be appoint-
ed conformable
to 10 Geo. 3.
c. 16. & 11,
Geo. 3. c. 44.

Notice of the
meeting of com-
mittees to be
given to the pe-
titioners and re-
turning officers.

Regulations of
10 Geo. 3. c.
16 and 11 Geo.
3. c. 42. extend
to this act.

When returning
officers cannot be
found, or do not
appear at com-
mittees, other
persons may be
appointed to ap-
pear in their
stead, and where
more than one
petition is pre-
sented, the house
to determine
whether the re-
turning officer is
to strike off from
the list of mem-
bers drawn by
lot.

“ directions for ordering a return to be made, or
“ for altering the return if made, or for the issuing
“ a new writ for a new election, or for carrying
“ the said determination into execution, as the case
“ may require.”

Sect. 11. “ That all and every the rules, regu-
“ lations, authorities, and powers, given or pre-
“ scribed by either of the said recited acts for re-
“ gulating the trial of controverted elections, with
“ respect to select committees, to be appointed by
“ virtue of the said acts, or either of them, shall be
“ in full force and effect with respect to select com-
“ mittees to be appointed pursuant to this present
“ act, in as full and ample manner as if the same
“ were herein repeated and particularly and special-
“ ly enacted concerning the same.”

Sect. 12. Provided, “ That if the returning
“ officer or officers, by whom such return ought
“ to have been made, or has been made, cannot be
“ found so as to be served with the notice or order
“ herein beforementioned, or being served shall not
“ appear by himself or themselves, his or their
“ counsel or agents, at the day or time appointed
“ for taking such petition into consideration, it
“ shall and may be lawful for the house to permit
“ or authorise any person to appear in the stead of
“ him or them; and in case there shall be more
“ petitions than one presented, complaining of
“ such return, or omission of a return, on distinct
“ interests, or complaining upon different grounds,
“ the house shall determine from the nature of the
“ case whether the returning officer or officers, or
“ person appearing in the stead of him or them,
“ shall, together with the petitioners, be intitled
“ to strike off from the list of members drawn by
“ lot, in the manner directed by the said act, pas-
“ sed in the 11th year of his present majesty, in
“ the case where there shall be more than two par-
“ ties before the house, or whether such list shall
“ be reduced by the parties severally presenting
“ the said petitions only.”

Sect.

Sect. 13. " That if any sheriff, or other returning officer or officers, who shall preside at any election of a member or members to serve in parliament for any county, city, borough, or place, shall wilfully offend against, or act contrary to the true intent and meaning of this act, every such person shall be liable to be prosecuted by information or indictment in his majesty's court of king's-bench, or at any court of oyer and terminer, great sessions, or gaol delivery, for the county, city, town, or place, where such offence shall be committed, in which no *nolle prosequi* or *cesset processus* shall be granted."

Returning officers liable to prosecution for offences against this act.

Sect. 14. " That if any sheriff or returning officer shall wilfully delay, neglect, or refuse duly to return any person who ought to be returned to serve in parliament for any county, city, borough, or place within *Great Britain*, every such person may, in case it shall have been determined by a select committee, appointed in the manner herein before directed, that such person was intitled to have been returned, sue the sheriff or other officer or officers, having so wilfully delayed, neglected, or refused, duly to make such return, and every or any of them, at his election, in any of his majesty's courts of record at *Westminster*, or the court of session in *Scotland*; and shall recover double the damages he shall sustain by reason thereof, together with full costs of suit."

Returning officers may be sued for neglecting to return persons duly elected.

Sect. 15. Provided, " That every indictment, information, or action, for an offence against this act, shall be found, filed, or commenced within *one year* after commission of the fact on which such indictment, information or action shall be grounded, or within *six months* after the conclusion of any proceedings in the *House of Commons*, relating to such election."

Actions to be commenced within one year after the offence, or six months after conclusion of proceedings in the house.

Sect. 16. Provided always, " That, notwithstanding any thing in this act contained, it shall and may be lawful for the sheriff of the county

Poll may be adjourned from Winchester to Newport in the Isle of Wight, &c

" of

Election of Members.

“ of *Southampton*, and he is hereby required, after
 “ any poll for the said county shall have closed at
 “ *Winchester*, and which shall always within the
 “ space of *fifteen days* at the most, in the manner
 “ above required, to adjourn the poll to *Newport*
 “ in the *Isle of Wight*, in case the same shall be re-
 “ quired by one or more of the candidates, so that
 “ every such adjourned poll, shall commence with-
 “ in *four days from the close of the poll at Winchester*,
 “ and shall not continue longer than *three days at*
 “ *most*.”

On all elections
 by the liverymen
 and at the ward-
 motes, presiding
 officer to appoint
 a convenient
 number of clerks
 to take the poll,
 &c.

None to be poll-
 ed who is not
 sworn.

Liverymens oath
 at elections.

For regulating elections for *London*, the stat.
 II Geo. I. c. 18. §. 1. enacts, that at all times,
 from and after the first day of *June*, 1725, upon
 every election of a citizen or citizens to serve for
 the said city of *London*, in parliament, &c. the pre-
 siding officer or officers at such elections shall, in
 case a poll be demanded by any of the candidates,
 or any two or more of the electors, appoint a con-
 venient number of clerks to take the same ; which
 clerks shall take the said poll in the presence of the
 presiding officer or officers, and be sworn by such
 officer or officers truly and indifferently to take the
 same, and to set down the name of each voter, and
 his place of residence or abode, and for whom he
 shall poll, and to poll no person, who shall not be
 sworn, or being a *Quaker*, shall not affirm accord-
 ing to the direction of this act : and every person
 before he is admitted to poll at any election of any
 citizen or citizens to serve in parliament, or of any
 officer or officers usually chosen by the liverymen
 of the said city, as aforesaid, shall take the oath
 herein after mentioned, or being one of the people
 called *Quakers*, shall solemnly affirm the effect
 thereof, That is to say,

“ You do swear, that you are a freeman of *London*,
 “ and a liveryman of the company of and have
 “ so been for the space of twelve calendar months ; and
 “ that the place of your abode is at in
 “ and that you have not polled at this election.”

So help you God.

And

And if any person or persons shall refuse or neglect to take the oaths hereby respectively appointed to be taken, or being a *Quaker* shall refuse or neglect to make such solemn affirmation, as aforesaid, then, and in every such case, the poll or vote of such person or persons, so neglecting or refusing, shall be, and the same is hereby declared to be null and void, and as such shall be rejected and disallowed. *Sett. 1.*

On refusal to swear, poll to be rejected.

That at all times, from and after the said first day of *June, 1725*, upon every election of such citizen or citizens, by the liverymen of the said city, all and every person and persons, having a right to vote or poll at such election or elections, shall, before he be admitted to vote or poll thereat (if required by any of the candidates, or any two or more of the electors) first take the oaths in and by an act made in the first year of his majesty's reign [intituled, *An act for the further security of his majesty's person and government, and the succession of the crown in the heirs of the late princess Sophia, being protestants, and for extinguishing the hopes of the pretended prince of Wales, and his open and secret abettors*] appointed to be taken, or being one of the people called *Quakers*, shall, if required, as aforesaid, solemnly affirm the effect thereof, and if any person or persons shall, being required thereunto, as aforesaid, refuse or neglect to take the said oaths, by the said act appointed to be taken, or to affirm the effect thereof, as aforesaid, that then the poll or vote of such person or persons so neglecting or refusing shall be, and the same is hereby declared to be null and void, and as such shall be rejected and disallowed; and the presiding officers at all and every the respective elections aforesaid, and such sworn clerks as shall be by them appointed, are hereby respectively authorised and impowered to administer the above mentioned oaths and affirmations; and if any such presiding officer or officers, sworn clerk or clerks, shall neglect or refuse so to do, or shall otherwise offend in the premises, contrary

The oath & G. to be taken, if required.

Presiding officer and sworn clerk to administer the oaths, on penalty of 60*l.*

trary to the true intent and meaning of this act; every such officer and sworn clerk shall, for every such offence, forfeit the sum of sixty pounds of lawful money of *Great Britain*, besides costs of suit.

Penalty on falsely taking the oaths, or suborning.

And it is hereby further enacted, that if any person or persons shall wilfully, falsely, and corruptly take the said oaths or affirmations, set forth and appointed in and by this act, or either of them, and be thereof lawfully convicted by indictment or information, or if any person or persons shall corruptly procure or suborn any other person to take the said oaths or affirmations, or either of them, whereby he shall wilfully and falsely take the said oaths or affirmations, or either of them, and the person so procuring or suborning shall be thereof convicted by indictment or information, every person so offending shall, for every such offence, incur and suffer such penalties, forfeitures, and disabilities as persons convicted of wilful and corrupt perjury at the common law are liable unto. *Sec. 3.*

Presiding officer how to act if a poll be demanded.

And to the intent that the poll at every such election may be expeditiously and duly taken, be it further enacted, that if a poll shall be demanded at any of the elections before mentioned, after the said first day of *June*, in the year of our Lord, 1725, the presiding officer or officers at such election shall begin such poll the day the same shall be demanded, or the next day following at furthest, unless the same shall happen on a *Sunday*, and then on the next day after, and shall duly and orderly proceed thereon, from day to day (*Sundays* excepted) until such poll be finished, and shall finish the poll at elections by the liverymen within seven days, exclusive of *Sundays*; and the poll at the wardmote within three days, exclusive of *Sundays*, after the commencing the same respectively, and shall, upon adjourning the poll on each day, at all and every the elections aforesaid, seal up the poll-books with the seals, and in the presence of such of the respective candidates, or persons deputed by them,

When the poll to be finished, &c.

them, as shall desire the same, and the said poll-book shall not be opened again but at the time and place of meeting, in pursuance of such adjournment; and after the said poll is finished, the said poll-books being sealed, as aforesaid, shall within *two days* after be publicly opened at the place of election, and be duly and truly cast up, and within *two days* after such casting up, the numbers of the votes or polls for each candidate shall be truly, fairly, and publicly declared to the electors, at the place of election, by the officer or officers presiding at such election; and if a scrutiny shall, upon such declaration made, be lawfully demanded, the same shall be granted and proceeded upon, and the respective candidates shall immediately nominate to the presiding officer or officers at such elections, any number of persons qualified to vote at such election, not exceeding six, to be scrutineers for and on behalf of the candidate or candidates, on each side, to whom the presiding officer or officers at such elections shall, within six days next after such scrutiny shall be demanded, upon request, and at the charge of the candidate or candidates, or any of the scrutineers on his or their behalfs, deliver, or cause to be delivered to him or them, a true copy, signed by such officer or officers of the poll taken at such election; and all and every the scrutinies to be had or taken upon any election to be made by the liverymen of the said city, shall begin within *ten days* after the delivery of the copies of the said polls, and be proceeded on day by day (*Sundays excepted*) and shall be finished *within fifteen days* after the commencement of such scrutiny; and thereupon the presiding officer or officers shall, *within four days* after the finishing such scrutiny, publickly declare at the place of such election which of the candidates is or are duly elected, and the number of legal votes for each candidate appearing to him or them upon such scrutiny; and on the election of any officer or officers at the respective wardmotes of the said city, if a scrutiny

If a scrutiny be demanded,

Scrutineers not to exceed six on each side.

Scrutinies when to begin, and when finished on election by liverymen.

Scrutinies on
elections at
wardmotes.

True copies of
the objections
against the pol-
lers.

Penalty 200l.
with costs.

A true list to be
given of the vo-
ters disallowed.

be demanded, the candidates or scrutineers, nominated on their behalfs respectively, shall, within ten days next after the receipt of the copy or copies of the polls taken at such election, deliver or cause to be delivered to the presiding officer or officers, the names in writing of the several persons, who have polled in the said election, against whose votes they shall object, with the particular objections against each respective name; and the presiding officer or officers shall thereupon, within three days then next following, at the request and charges of any candidate or candidates, or the scrutineers named on his or their behalfs, deliver or cause to be delivered to him or them, one or more true copy or copies (signed as aforesaid) of the paper containing such names and objections as aforesaid; and the said presiding officer or officers, within ten days then next following (exclusive of *Sundays*) after having fully heard such of the said candidates, as shall desire the same, or some person appointed by him or them, touching such objections shall, at or in the place of election, openly and publicly declare which of the said candidates is or are duly elected, and the number of legal votes for each candidate appearing to him or them upon such scrutiny; and if the said presiding officer or officers, or any other person or persons, shall offend in the premises, every such offender shall forfeit for every such offence the sum of two hundred pounds of lawful money of *Great Britain*, with full costs of suit, over and above all other penalties, and forfeitures inflicted by any other act or acts of parliament. *Secl. 4.*

That after any election made, and scrutiny taken, as is herein before provided and directed, the presiding officer or officers at such election and scrutiny shall deliver, under his or their hand or hands a true list of the voters by him or them disallowed upon such scrutiny, to any of the candidates, who shall, upon the final declaration of the election, as aforesaid, demand the same, within six days after such

such demand made, such candidate paying for the same: provided always, that no such list, as is hereby directed to be given, nor any thing therein contained, shall be admitted to be given in evidence on any action or occasion whatsoever. *Sec.*

5.

That the mayor of the city of *London* for the time being, upon request to him made by any candidate or candidates, his or their agent or agents, at any election of a citizen or citizens to serve in parliament for the said city, or of a mayor, or any other officer or officers to be chosen by the liverymen thereof, where a scrutiny is demanded and granted, shall issue his precepts as has been usual, requiring the masters and wardens of the livery-companies of the said city respectively, to cause their clerks forthwith to return to him two true lists of all the liverymen of their respective companies; and the said clerks shall return such their respective lists upon oath, within three days after the receipt of any such precepts, one of which lists so returned, the said mayor shall, and he is hereby required forthwith to deliver or cause to be delivered to the candidate or candidates on each side at such election, or to his or their agent or agents respectively. *Sec.* 6.

Mayor to issue precepts to the companies to bring in lists.

No persons shall have a right to vote at any election by the liverymen, who have not been upon the livery 12 calendar months, and who shall not have paid their livery fines, or who shall have received such fines back again in part or in all; or shall have had any allowance in respect thereof; and no person shall have a right to vote who have within two years next before requested to be, and have been, discharged from paying taxes, or have within that time received *alms*, *f.* 14. And all the forfeitures herein shall be distributed, one third to the king, one third to the chamberlain, for the use of the city, and the remaining third to the prosecutor who will sue within six calendar months after incurred. *f.* 25.

No person, a right to vote who have not been upon the livery 12 calendar months, and paid their fines, &c.

And no person who within two years have been discharged from taxes.

Forfeitures how applied.

When election is closed, precepts, &c. to be returned to the sheriffs, for them to file in the chancery, with the writ and the indentures taken for the shires.

Before I insert the form of the precept for the election of knights for the shire, and the precepts from the sheriff to the mayor and other officers to proceed to election of citizens and burgessees; it may be proper to observe, that when the election is closed, the returning officers in cities and boroughs, return their precepts to the sheriff, with the indentures annexed, and the sheriff returns the whole, together with the writ for the county, and the knights elected thereupon to the clerk of the crown in chancery, before the day of meeting, if it be a new parliament, or within fourteen days after the election, if it be an occasional vacancy; and this under penalty of 500*l.* 10 & 11 *W.* 3. c. 7. s. 3.

Precept for the election of two members to serve in parliament at the general election for knights of the shire.

Oxfordshire } *J. P.* Esq; sheriff of the county afore-
to wit. } said, having received his majesty's writ, under the great seal of *Great Britain*, for the electing two knights to serve for this county in the parliament to be holden at the city of *Westminster*, on the 31st day of *October* next, do, in obedience to the said writ, and of the several statutes in that case made, hereby proclaim and give public notice, that at a special county court, which will be held at _____ in, and for the said county, on the _____ day of this instant, at ten of the clock in the forenoon, pursuant to the statute in that case made and provided; I shall proceed to such election, when and where all persons interested therein will be heard, and are to give their attendance accordingly, dated the _____ day of _____ 1786. *J. P.* Esq; sheriff.

The indenture.

This indenture made in full county, at a special county court, for the county of _____ held at _____ in the said county, pursuant to the statute in that behalf made, on the _____ day of _____ in the year of our Lord 1786, between *J. P.* sheriff of the county aforesaid, of the one part, and (here put twenty or thirty of the most respectable names) with many others, freeholders of the said county of _____ of the other part,

past, witnesseth, that by virtue of his majesty's writ under the great seal of *Great Britain*, to the said sheriff directed, and hereunto annexed, for the electing of two knights of the aforesaid county, to serve for the said county, in his majesty's parliament, to be holden at the city of *Westminster*, on the day of next. We therefore, the said sheriff, and the said (twenty or thirty other names as beforementioned) and many other freeholders of the said county (the major part of the whole county aforesaid) being this present day, at aforesaid, sworn and examined, according to the force, form, and effect of the said writ, and of divers statutes in that case lately made and provided, and according to the directions of the said writ; have (proclamation of the premises being first made) elected *G. H.* of in the county of Esq; and *J. K.* of in the said county, Esq; the most fit and discreet knights of the shire of the aforesaid county, to attend at the said parliament, giving and granting to the said knights, full power, and sufficient authority for themselves and the commonalty of the aforesaid county, to do and consent to those things, which in his majesty's said parliament, by the common council of the realm (by the blessing of God) shall happen to be ordained upon the affairs in the said writ specified. In testimony whereof, as well the hand and seal of the office of the said sheriff, as also the hand and seal of the other parties above named, are hereunto interchangeably set, the day and year first above written.

A. B. - *G. H.* - *N. O.*
C. D. - *J. K.* - *P. Q.*
E. F. - *L. M.* - *R. S.*

This indenture made in full county, at a special county court, for the county of held at in the said county, pursuant to the statute, on the day of in the 26th year of the reign, &c. and in the year

Indenture for returning one knight of the shire for the county, in the room of one who has been

Election of Members.

called up to the
house of of lords.

of our Lord, 1786, between sheriff of
the county aforesaid, of the one part; and (here
put twenty or thirty names) with many others,
freeholders of the said county, of the other part,
witnesseth, that by virtue of his majesty's writ,
under the great seal of *Great Britain*, to the said
sheriff directed, and hereunto annexed, for the
electing (in the place of Esq; who was
lately chosen one of the knights for the said county,
for his majesty's present parliament, but is now
baron of in the said county, and
one of the peers of the kingdom of the upper
house of the said parliament; and for that reason
is removed from the lower house of the said parlia-
ment,) of one other fit and discreet knight of the
aforesaid county, to serve for the said county, in
his majesty's said parliament, which, at the time
of the issuing the said writ, was holden at his
majesty's city of *Westminster*. We therefore, the
said sheriff, and the said (here put the names afore-
said,) and many others, freeholders of the said
county, (the major part of the whole county afore-
said) being this present day, at aforesaid,
sworn and examined, according to the force, form,
and effect of the said writ, and of divers statutes
in that case lately made and provided, and accord-
ing to the directions of the said writ; have (pro-
clamation of the premises being first made) elected
Sir bart. of a fit and discreet
knight of the aforesaid county, to attend at the
said parliament; giving and granting to the said
knight, full power and sufficient authority, for
himself and the commonalty of the aforesaid county,
to do and consent to those things which in his
majesty's parliament aforesaid, by the common
council of the realm (by the blessing of God)
shall happen to be ordained upon the affairs in the
said writ specified. In testimony whereof, as well
the hand and seal of the office of the said sheriff, as
also the hands and seals of the other parties above-
named, are hereunto interchangeably set the day
and

Election of Members.

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and year first above written.

		J. B. Esq; sheriff.
A. B.	-	G. H.
C. D.	-	J. K.
E. F.	-	L. M.

to wit. G. K. Esq; sheriff of the county
aforesaid, to the bailiff of the borough of
in the said county, greeting. Know ye, that I
have received a certain writ of our lord the king
to me directed, the tenor whereof followeth in
these words, to wit, (*George the third, &c.* here
set forth the writ *verbatim*) and because the exe-
cution of the said writ, as to the botough of
belongs to you; therefore, by virtue of the said
writ, I require you, that you forthwith cause one
burgess to be elected for the said borough, accord-
ing to the command of the said writ, and how
this my warrant shall be executed, you shall make
known to me immediately after the said election
made, so that I may certify the same, together
with the said writ, and this precept, to our lord
the king in his *Chancery* forthwith. Given under
the seal of my office, the day of 17
By the same sheriff.

Precept and re-
turn of members
to serve in par-
liament for a
borough, direct-
ed to the bailiff.

(Indorsed.

The day of at nine o'clock: Re-
ceived this precept from the under sheriff of the
county of *W. P. bailiff of the said borough.*

Bailiff's indorse-
ment thereon.

Proclamation made on the day of
17 at the usual places within the borough of
R. within mentioned, to proceed to election there
on the day of at 11 of the clock in
the forenoon of the same day.

W. P. bailiff.

The execution of this precept, appears in a cer-
tain schedule hereunto annexed.

Return of the
precept.

W. P. bailiff.

The execution of this writ appears in certain
schedules hereunto annexed.

Return to the
writ.

This indenture made at the borough of
in the county of the day of in
U 4 the

Indenture.

The persons
must be free citi-
zens, or burgef-
ses of the town,
having due elec-
tion.

the 22d year of the reign of, &c. and in the year of our Lord 1782; between G. K. Esq; sheriff of the said county of the one part, and W. P. bailiff of the said borough, and C. K. Esq; and L. M. Esq; G. H. Esq; and T. L. Esq; and others, burgesses of the aforesaid borough, by virtue of a certain precept, under the seal of the said sheriff made, and directed to the said bailiff, bearing date the

day of instant; have freely and indifferently elected A. K. Esq; and G. N. Esq; burgesses of the borough aforesaid, the most sufficient and discreet to be at the parliament of our said lord the king, to be holden at *Westminster*, the day of next ensuing, which said A. K. and G. N. have full and sufficient power for them the said electors, for themselves and the commonalty of the said borough, to do and consent to those things which then and there, by the common council of the kingdom of *Great Britain*, (by the blessing of God) shall happen to be ordained upon the affairs in the said parliament to be treated of. In witness whereof, to one part of these presents remaining with the said sheriff, as well the said bailiff, as the said burgesses, have set their hands and seals, and to the other part remaining with the said bailiff and burgesses, the said sheriff hath set his seal, the day and year first above written.

W. B. bailiff.

and twenty-seven others.

Precept to the
mayor of the
city of R. to re-
turn two mem-
bers.

Kent } C. B. Esq; sheriff of the county afore-
to wit } said, To the mayor of the city of R,
greeting. By virtue of his majesty's writ, under
the great seal of *Great Britain*, to me directed,
for the electing of two citizens, to serve for the
city of R. aforesaid, in a certain parliament, or-
dered by his majesty, to be holden at his majesty's
city of *Westminster*, on the day of
next ensuing. These are to will and require you,
that (proclamation within the said city of the day
and place of election being first made) you cause
freely and indifferently to be elected, two citizens
of

of the said city, of the most sufficient and discreet, by those, who at such proclamation shall be present, according to the form of the statutes in that case made and provided. And the names of those citizens so to be elected (whether they be present or absent) you cause to be inserted in certain indentures, to be thereupon made, between me and those who shall be present at such election. And then, at the day and place aforesaid, that you cause to come, in such manner that the said citizens for themselves, and the commonalty of the said city, may have from them, full and sufficient power, to do and consent to those things which then and there, by the common council of the kingdom, by the blessing of God, shall happen to be ordained; but you are not to elect me, or any other sheriff of this kingdom; and the said election you are forthwith to certify to me, sending to me one part of the said indentures annexed to this precept, that I may certify the same to his majesty, in his chancery; hereof you are not to fail. Given under the seal of my office, the day of in the 26th year of the reign of king *George* the third, and in the year of our Lord, 1786. By the same sheriff.

Received of the within named sheriff, this precept, by the hands of Mr. *A. B.* on *Saturday* the day of 1786, at half past nine of the clock in the forenoon, by me.

J. J. mayor of *R.*

The execution of this precept, appears in a certain schedule hereunto annexed.

The return of the precept to the sheriff.

J. J. mayor of *R.*

W. S.

R. P.

W. F.

J. J.

This indenture made, &c. between, &c. Witnesseth, that by virtue of a warrant to me directed, from *G. B.* Esq; sheriff of the county of *R.* for the

Indenture of election by a mayor.

Election of Members.

the electing and choosing two (citizens) men of good understanding, wit, knowledge, and discretion, for causes concerning the weal public of the realm, to be at his majesty's high court of parliament, to be holden at his city of *Westminster*, on the day of next ensuing; I, *J. J.* mayor of the city of *R.* with the whole assent and consent of the rest of the citizens there, have made choice and election of *G. H.* of, &c. Esq; and *J. K.* of, &c. Esq; to be citizens for our said city of *R.* to attend at the said parliament, according to the tenor of the said warrant to me directed in that behalf. In witness whereof, I have to these presents, set our common seal of our said city, the day and year first above written.

By the constables and burghers.

This indenture made, &c. between *H. A.* Esq; high sheriff of the county of of the one part, and *H. T.* and *W. S.* junior, and constables of the borough and parish of *A.* in the said county of *B.* and *F. L.* Esq; *R. C.* gent. (with forty others named) and others the burghers and inhabitants of the said borough of *A.* of the other part; witnesseth, that by virtue of a precept to the said constables directed, and delivered by the said sheriff, under the seal of his office in that behalf; they the said constables, burghers and inhabitants, have of their full consent, duly chosen Sir *J. W.* bart. and *S. M.* Esq; two burgessees, fit and discreet men to serve for the said borough in the parliament, to be holden at his majesty's city of *Westminster*, the day of now next ensuing, according to the tenor of the said precept, giving, and by these presents, granting to the said two burgessees so chosen, full power for themselves and the commonalty of the said borough, to do and consent as in the said precept is specified. In witness whereof, to one part of these presents remaining with the said sheriff, they, the said constables, burghers and inhabitants, have hereunto set their hands and seals; and to the other part remaining with the said constables, the said sheriff hath

hath set the seal of his office, the day and year first above written.

Subscribed by the said constables, and 47 others.
Middlesex, to wit. Sir C. A. knight, and Sir R. G. knight, sheriff of the said county to the bailiff of the liberty of the dean and chapter of the collegiate church of *St. Peter at Westminster* in the said county, greeting. Know that I have received a certain writ of our lord the king to me directed, the tenor whereof followeth (here state the writ *verbatim*) and because the execution of the said writ belongs to you, therefore by virtue of the said writ, I require you, that you forthwith cause a citizen to be elected for the said city in the place of the said P. W. according to the command of the said writ; and how this my warrant shall be executed, you shall make known to me, immediately after the said election made, so that I may certify the same, together with the said writ, and this precept return to our said lord the king, in his chancery forthwith. Hereof fail not: This is your warrant given under the seal of my office this day of 1786

Precept from the sheriff of Middlesex to the bailiff of Westminster for the election of one citizen for the said city.

By the same Sheriff.

The execution of this writ appears in a certain schedule hereunto annexed.

Return of precept.

I. C. Esq. Bailiff.

This indenture made in the liberty of *Westminster* in the county of *Middlesex* the day of in the 26th year of the reign of, &c. Between Sir C. A. knight, and Sir R. G. knight, sheriff of the county of *Middlesex*, of the one part, and I. C. Esq. bailiff of the liberty of the dean and chapter of the collegiate church of *St. Peter, Westminster*, in the said county, Sir I. C. Baronet, Sir C. D. knight of the most honorable order of the Bath, the honorable W. L. G. S. F. R. F. H. and many other citizens, burgesses, and inhabitants, of the city town and borough of *Westminster*, of the other part, *witnesseth* that by a certain precept directed from the said sheriff to the bailiff and sewed

The indenture.

Election of Members.

sewed to this indenture (proclamation in the said precept first mentioned, and of the day and place, as in the said precept is directed, first being made) the citizens who were present at the said proclamation, have freely and indifferently, according to the form of the statute in that case made and provided, and according to the tenor and effect of the aforesaid precept and of the writ in the said precept recited, chosen one citizen of the most discreet and sufficient of the city and liberty aforesaid (that is to say) the honorable *E. C.* Esq. to which said *E. C.* so elected, the aforesaid citizens have given and granted full and sufficient power, for themselves and the commonalty of the city, town, borough, and liberty aforesaid, to do and consent to those things, which at the said parliament by the common council of the said kingdom (with God's assistance) shall happen to be ordained upon the affairs in the said precept specified, according to the form and effect of the said precept. In witness whereof as well the said sheriff as the aforesaid bailiff, citizens, burgesses and inhabitants of the city, town, borough and liberty aforesaid, to these indentures their seals have interchangeably put, the day and year first above mentioned.

Chester two knights and two burgesses for the city.

By stat. 34 & 35. *H. 8. c. 13. sect. 4.* The county palatine of *Chester* shall have two knights, and likewise two citizens to be burgesses for the city of *Chester*, to be chosen by process to be awarded by the chancellor of *England*, unto the chamberlain of *Chester*, his lieutenant or deputy; and likewise process to be made under like form as is used within the county palatine of *Lancaster*, or any other county and city where shall be knights and burgesses of parliament. *Vide stat. 18 Geo. 2. c. 18. f. 12.*

Sheriff against election to cause seven tables to be made, at the costs of the candidates.

By stat. 10 *Ann. c. 23. f. 7.* The sheriff against every election of knights of the shire, shall cause seven tables, and no more, to be made at the costs of the candidates, within the shire hall of the county, for taking the poll viz. two at the upper end,

end, two at each side, and one at the lower end of the hall.

By stat. 25 *Car. 2. c. 9.* The county palatine of *Durham* may have two knights for the county, and the city of *Durham* two citizens, to be burgesses for the same city, to serve in parliament, to be elected by writ awarded to the *Lord Bishop* of *Durham*, or his *chancellor* of the county, and precept thereupon to the Bishop, or his temporal chancellor to the sheriff: the elections of knights to be made by the greater number of freeholders, as in other counties, and the election of burgesses for the city of *Durham*, to be made by the major part of the mayor, aldermen, and freemen, which knights and burgesses shall be returned by the sheriff, into the chancery, upon the like pains as the sheriffs of any other county. *Stat. 18 Geo. 2. c. 18. s. 2.*

Durham two knights, two for the city.

For the county to be chose by freeholders, as in other counties.

City to be chosen by the mayor, &c.

By stat. 2 *Wil. & M. stat. 1. c. 7. s. 1.* Whereas the lord wardens of the cinque ports have claimed as of right, a power of nominating to each of the cinque ports, the two ancient towns and their members, one person whom they ought to elect as a baron or member of parliament, contrary to the antient usage and freedom of elections, "It is declared, that all such nominations are contray to law and void." *s. 2.*

Cinque ports.

For all parliaments two knights shall be chosen for the shire of *Monmouth*, and one burges for the borough of *Monmouth*, the burgesses fees to be levied as well within the borough of *Monmouth*, as within all other antient boroughs within the said shire. *27 H. 8. c. 26. s. 28.*

Wales 2 knights to be chosen for shire of *Monmouth*; one burges for the borough.

One for every of the shires of *Brecknock*, *Radnor*, *Montgomery*, and *Denbigh*, and for every other shire within *Wales*; and for every borough being a shire town, except *Merioneth*, one burges; fees to be levied as well of the shire towns, as of all other antient boroughs within shires. *s. 29.*

One for shire of *Brecknock*, &c. and every other shire.

All the king's subjects in *Wales* shall find at all parliaments, knights, citizens and burgesses, 34 & 35 *H. 8. c. 26. s. 110.*

All the king's subjects in *Wales* shall find knights, &c.

Town

Haverfordwest.

Town of *Haverfordwest* one burges at every parliament. *f.* 111.

For assessing and
levying of
knight's wages,
sheriffs to make
proclamation.

The sheriff in the next county court after deliverance of the writs for levying the knights wages, shall make proclamation, that the coroners and every chief constable of the peace, and the bailiffs of every hundred, and all others which will be at the assessing of the wages, shall be at the next county; and the sheriff, under-sheriff, coroner or bailiffs, shall be there at the same time, on pain of 40 s. at which time the sheriff in presence of them, and of the suitors in full county shall assess every hundred to pay a certain sum for the wages; so that the whole sum of all the hundreds, do not exceed the sum due: and after that in same county shall assess every village to a certain sum, so that the whole of the towns within any hundred do not exceed the sum assessed upon the hundred. And the sheriffs, nor none other officer, shall levy more of any village, than what thereunto they were assessed; and if any do assess any hundred or village otherwise than aforesaid, forfeit 20 l. to the king, and to any man that will sue 10 l. The sheriffs shall levy the money assessed upon the villages, as hastily as they well may, and the same shall deliver to the knights, upon the said pains. *f.* 2.

For payment of
wages in Wales.

The stat. 34 & 35 H. 8. c. 13. *f.* 1, gives power to every of the twelve shires of *Wales* and in the county of *Monmouth*; to levy the knights fees and wages, and to pay the same within two months after the writ delivered, and in default to forfeit 20 l. one moiety to the king, and the other who sues. If default be for longer than two months to forfeit 20 l. every month.

Mayor, &c. shall
levy and pay
wages to bur-
geses.

Every mayor, bailiff, and other head officers of cities and towns in the said twelve shires, and *Monmouth*; within like space of two months after receipt of writ shall levy and pay the wages to their burgeses under like pain. *f.* 2.

Rates for the
burgesses in
Wales.

Provided two justices of the peace in every shire in *Wales* and *Monmouth* shall have power to tax every

every city and town for the rates that the cities and boroughs shall pay towards the burgesſes within the ſhire, &c. which rates ſhall be again rated on the inhabitants of the cities and boroughs aforeſaid, and mayor, &c. collect the ſame. *f. 4.*

It appears that in *Ed. 3's time* 4*s.* a day was allowed a knight of a ſhire, and 2*s.* for a citizen or burgeſs. 4 *Inf.* 16. But now it ſeems 13*s.* 4*d.* and 10*s.* for a baron or burgeſs. *Dalt.* 344. and the ſheriff may diſtrain the goods of the town, or any of the town for the wages of a knight, or the cattle. *Br. Diſtr.* 95. *Dalt.* 345. and may ſell the ſame. *Ibid.*

Former wages allowed.

Preſent wages.

The ſtat. 34 *H. 8. c. 24.* excuſes the inhabitants of the county of *Cambridge* and the manor of *Burlewes* in *Madingly*, is charged with 10*l.* yearly for ever, for the wages of the knights.

Cambridgeſhire excuſed.

Scotland.

BY ſtat. 5 *Ann. c. 8. f. 8. Art. 1.* The united kingdom ſhall be preſented by one parliament, to be ſtiled the parliament of *Great Britain*.

Sixteen peers are to be choſen to repreſent *Scotland* in parliament, and forty-five members, to ſit in the houſe of commons.

The manner of proceeding at the election of the commoners for *Scotland* is directed by the following acts of parliament. By ſtat. 6 *Ann. c. 6. f. 5.* it is enacted, That when any parliament ſhall at any time hereafter be ſummoned or called, the forty five repreſentatives of *Scotland* in the houſe of commons of the parliament of *Great Britain*, ſhall be elected and choſen by authority of the queen's writs under the great ſeal of *Great Britain*, directed to the ſeveral ſheriffs and ſtewarts of the reſpective ſhires and ſtewartries; and the ſaid ſeveral ſheriffs and ſtewarts ſhall, on receipt of ſuch writs, forthwith give notice of the time of election for the knights

In what manner the 45 repreſentatives of *Scotland* ſhall be elected.

Election of Members.

knights or commissioners for their respective shires or stewartries, and at such time of election the several freeholders in the respective shires and stewartries shall meet and convene at the head burghs of their several shires and stewartries, and proceed to the election of their respective commissioners or knights for the shire or stewartry; and the clerks of the said meetings, immediately after the said elections are over, shall respectively return the names of the persons elected to the sheriff or steward of the shire or stewartry, who shall annex it to his writ, and return it with the same into the court out of which the writ issued: and as to the manner of election of the fifteen representatives of the royal boroughs, the sheriffs of the shire of *Edinburgh* shall, on the receipt of the writ directed to him, forthwith direct his precept to the lord provost of *Edinburgh*, to cause a burghs to be elected for that city; and on receipt of such precept, the city of *Edinburgh* shall elect their member, and their common clerk shall certify his name to the sheriff of *Edinburgh*, who shall annex it to his writ, and return it with the same into the court from whence the writ issued: and as to the other royal burghs, divided into fourteen classes or districts, the sheriffs or stewarts of the several shires and stewartries, shall on the receipt of their several writs, forthwith direct their several precepts to every royal borough within their respective shires or stewartries, reciting therein the contents of the writ, and the date thereof, and commanding them forthwith to elect each of them a commissioner as they used formerly to elect commissioners to the parliament of *Scotland*, and to order the said respective commissioners to meet at the presiding borough of their respective district (naming the said presiding borough) upon the thirtieth day after the day of the *teste* of the writ, unless it be upon the Lord's day, commonly called *Sunday*, and then the next day after, and then to chuse their burghs for the parliament; and the common clerk of the
then

then presiding borough shall immediately after the election, return the name of the person so elected to the sheriff or steward of the shire or stewartry wherein such presiding borough is, who shall annex it to his writ, and return it with the same into the court from whence the writ issued: and in case a vacancy shall happen in time of parliament, by the decease or legal incapacity of any member, a new member shall be elected in his room, conformable to the method herein before appointed; and in case such vacancy be of a representative for any one of the said fourteen classes, or districts of the said royal boroughs, that borough which presided at the election of the deceased or disabled member, shall be the presiding borough at such new election.

How vacancies happening in time of parliament shall be supplied.

Provided always, That upon the issuing of writs of summons for the electing of a parliament, if any shire or stewartry wherein a royal borough is, hath not then a turn, or right to elect a commissioner, or knight of the shire or stewartry for that parliament, that then it shall be omitted out of the writ directed to such sheriff or steward, to cause a knight, or commissioner for that shire or stewartry to be elected for that parliament.

Shire or stewartry not having a turn to elect, to be omitted out of the writ.

That, if the clerk of any meeting of freeholders for the election of a commissioner to serve in parliament for any shire or stewartry in *Scotland*, after the first day of *May*, 1734, shall wilfully return to the sheriff or steward, any person, other than him who shall be duly elected; or if any other person pretending to be clerks, though not duly elected, shall presume to act as clerk, and wilfully to return to the sheriff any person as elected, who shall not be duly elected by the major part of such meeting; the party so offending, shall for every such offence, forfeit the sum of 500*l.* sterling, to be recovered by the candidate so elected, to whose prejudice such false return is made, in such manner as is herein after directed.

After first May, 1734, 500*l.* penalty on every false return.

X

That

Freeholders, on request, to subscribe the following oath, instead of that appointed by the act 12 Ann.

That every freeholder, who shall claim to vote at any election of a member to serve in parliament, for any lands or estate in any county or stewardry in *Scotland*, or who shall have right to vote in adjusting the rolls of freeholders, instead of the oath appointed to be taken, by an act made in the 12th year of her late majesty queen *Ann*, intituled, An act for the better regulating elections of members to serve in parliament for that part of *Great Britain* called *Scotland*, shall, upon the request of any freeholder formerly inrolled, before he proceed to vote in the choice of a member, or on adjusting the rolls, take and subscribe, upon a roll of parchment to be provided and kept by the sheriff, or steward clerk for that purpose; the oath following, which the preses or clerk to the meeting, either for the inrollment or election, is hereby empowered and required to administer; that is to say,

" I A. B. do in the presence of God, declare and
 " swear, that the lands and estate of for
 " which I claim a right to vote in the election of a mem-
 " ber to serve in parliament for this county or stewardry,
 " is actually in my possession, and do really and truly
 " belong to me, and is my own proper estate, and is
 " not conveyed to me in trust, or for or in behalf of any
 " other person whatsoever; and that neither I, nor
 " any person to my knowledge, in my name, or on my
 " account, or by my allowance, hath given, or intends
 " to give, any promise, obligation, bond, back-bond,
 " or other security whatsoever, other than appears
 " from the tenor and contents of the title, upon which
 " I now claim a right to vote, directly or indirectly,
 " for redispensing or reconveying the said lands and
 " estate in any manner of way whatsoever, or for
 " making the rents or profits thereof forthcoming to the
 " use or benefit of the person from whom I have ac-
 " quired the said estate, or any other person whatso-
 " ever; and that my title to the said lands and estate
 " is not nominal or fictitious, created or reserved in
 " me, in order to enable me to vote for a member to
 " serve

“*serve in parliament; but that the same is a true and real estate in me, for my own use and benefit, and for the use of no other person whatsoever; and that is the truth, as I shall answer to God.*”

And that in case he shall refuse, if required, to take and subscribe the oath aforesaid, his vote shall not be admitted or allowed, and his name shall forthwith be erased out of the roll of freeholders; and in case any person shall presume wilfully and falsely to swear and subscribe the said oath, and shall be thereof lawfully convicted, he shall incur the pains and punishment of perjury, and be prosecuted for the same according to the laws and forms in use in *Scotland*.

In case of refusal, vote not to be admitted, and name erased out of the roll.

That no judge of the Court of Session, or Justiciary, or baron of the Court of Exchequer in *Scotland*, shall be capable of being elected, or of sitting or voting as a member of the house of commons in any parliament which shall be hereafter summoned and holden.

Penalty on falsely swearing or subscribing.

Judges of Session, Justiciary, or Exchequer, incapable to be elected.

That the several sheriffs and stewarts in *Scotland*, shall, within the space of four days after the writ shall come to their hand, issue their precepts to the several boroughs within their jurisdiction to elect their delegates, and shall cause the same to be delivered to the chief magistrate of such borough resident in the borough for the time being; and that such chief magistrate, to whom such precept shall be delivered, shall, within two days after his receipt of the same, call and summon the council of the borough together, by giving notice personally, or leaving notice at the dwelling place of every councillor then resident in such borough; which council shall then appoint a peremptory day for the election of the delegate; but two free days shall intervene betwixt the meeting of the council which appoints the day of election of the delegate, and the day on which the election of the delegate is to be made.

Sheriffs, four days after receipt of the writs, to issue precepts for choosing delegates,

and chief magistrate two days after to summon the council of the borough.

Council to appoint a day for electing delegates.

And to prevent double elections of magistrates in boroughs, which frequently occasion double commissions

roll. penalty on every councillor or magistrate re-

parating from
the majority at
the annual elec-
tion for bo-
roughs.

commissions to delegates; be it enacted by the authority aforesaid, That at the annual election of magistrates and councillors for boroughs, no magistrate or councillors, or any number of magistrates or councillors, shall, for the future, upon any pretence whatever, take upon him or them, to separate from the majority of the magistrates and councillors, who have been such for the year preceding, and to appoint or elect separate magistrates or councillors, but shall submit to the election made, and to the magistrates and councillors elected and appointed by the majority of the town council assembled; and, if contrary to the direction of this act, any number of magistrates or councillors, shall, in opposition to the majority, take upon them to make a distinct and separate election of magistrates or councillors, their act and election shall be *ipso facto* void; and every magistrate or councillor, who concurred therein, shall forfeit and lose the sum of 100 l. sterling, to be recovered by the magistrates and councillors, from whom they separated, in manner herein after directed.

Magistrates or
councillors of
boroughs may
bring their action
in eight weeks
after the election

Provided always, That it shall, and may be lawful to, and for any magistrate or councillor of the borough, who apprehends any wrong was done at any annual election, to bring his action before the Court of Session in *Scotland*, for rectifying such abuse, or for making void the whole election (if illegal) only within the space of eight weeks after such election is over; and the Lords of Session, shall, and they are hereby expressly authorised and required, to hear and determine the cause summarily, and to allow to the party that shall prevail, their full costs of suit.

500 l. penalty on
neglecting to re-
turn the person
duly elected.

That every sheriff or steward in *Scotland*, who shall wilfully annex to the writ any false or undue return, and every common clerk of any presiding borough, who shall wilfully return to the sheriff or steward, any person, other than the person elected, or who shall neglect or refuse to return the person

person duly elected, shall forfeit the sum of 500*l.* sterling, to the person intitled to have been returned, and not returned, to be recovered from the said sheriff, steward, or common clerk, their heirs, executors, or administrators respectively, in a summary way, by action, petition, or summary complaint, before the said Court of Session, upon service of such summons, or of a copy of such petition or summary complaint, on fifteen days notice or warning, without abiding the course of any rolls, or further delay whatsoever; which action, petition, or complaint, the judges of the said Court, are hereby required to judge of, and determine with all convenient speed: Provided always, That such action, petition, or complaint, be commenced, presented, or made within the space of six months after the return is made. And in case the person duly elected, and not returned, shall neglect or omit to sue for the said penalty within the time before mentioned; then any freeholder within the shire or stewartry, or any magistrate or person bearing office in any of the boroughs of the district for which the return is unduly made, may sue for, and recover the same to his own use, by such action, petition, or complaint, and in such manner, as is before mentioned, with double costs of suit: Provided always, That such freeholder, magistrate, or person bearing office, shall commence, or bring such action within the space of twelve months after the return is made.

to be recovered in a summary way.

Complaints of undue returns to be commenced in 6 months after return.

Who may sue for such penalty,

and in what time.

That every penalty by this act imposed, with respect to the recovery of which no particular provision is herein before made, shall, and may be sued for, and recovered by way of summary complaint before the Court of Session in *Scotland*, upon fifteen days notice to the person complained of, without abiding the course of any roll; which said complaint, the Court of Session is hereby authorised and required to determine with all convenient speed.

Penalties, how to be recovered.

Freeholders, if required, to take the oaths at the election of a clerk, &c.

That every freeholder in *Scotland*, shall, before he be either inrolled or admitted to vote at any future election, or meeting for inrollment, in any question for the choice of clerks or preses, or other question whatsoever, (if required by any freeholder present) be obliged to take and subscribe the oaths appointed by law, to be taken by electors of members to serve in parliament, when required so to do; which oath, the preses or clerk of the meeting is hereby impowered and required to administer.

Method of presiding at elections.

And whereas, there have been some mistakes in the district of the boroughs of *Wigtown*, *Whithorn*, *New Galloway*, and *Stranraer*, in relation to their presiding at elections of members of parliament for that district, which may occasion disputes at future elections; be it enacted, That the boroughs continue to preside in the course they are now in, and that the borough of *Wigtown*, shall preside at the election of a member to represent that district in the next parliament, and that the other boroughs of the district preside afterwards in the method prescribed by the act of parliament of *Scotland*, made in the fourth session of the first parliament of queen *Ann*, intituled, An act for settling the manner of electing the sixteen peers, and forty five commoners, to represent *Scotland* in the parliament of *Great Britain*.

Writs of summons for calling a new parliament be made out immediately.

By stat. 16 Geo. 2. c. 11. §. 40. it is enacted, That when any new parliament, shall at any time hereafter be summoned or called, the Lord Chancellor, Lord Keeper, or Lord Commissioners of the great seal for the time being, shall issue out the writs for election of members to serve in parliament for that part of *Great Britain* called *Scotland*, with as much expedition as the same may be done, and that as well upon the calling or summoning any new parliament; as also in case of any vacancy during this present or any future parliament, the several writs shall be delivered to the sheriff or steward to whom the execution thereof does belong or appertain,

Election of Members.

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pertain, and to no other person whatsoever ; and that every such sheriff or steward, upon the receipt of the writ, shall upon the back thereof indorse the day he received the same, and shall forthwith upon receipt of the writ, at least within the space of four days after the receipt thereof, make out a precept to each borough within his jurisdiction, to elect a commissioner for choosing a burghers to serve in parliament, and shall cause the same to be delivered to the chief magistrate of such borough, resident in the borough for the time being ; and in case such sheriff or steward shall neglect to indorse on the back of the writ the day he received the same, or shall neglect to make out his precept, and to deliver the same to the chief magistrate within the time, and in the manner above directed, he shall for every such offence forfeit the sum of 100*l.* sterling, to any magistrate of the borough to which the precept is not timeously delivered, who shall sue for the same, to be recovered in manner herein after directed.

Penalty.

And be it further enacted by the authority aforesaid, that such chief magistrate to whom the precept shall be delivered in manner above directed, upon the receipt thereof, shall upon the back of the precept indorse the day he received the same, and shall within two days after his receipt of the precept call and summon the council of the borough together, by giving notice personally, or leaving notice at the dwelling place of every councillor then resident in that borough, which council shall then appoint a peremptory day for the election of a commissioner for choosing a burghers to serve in parliament. *f.* 41.

When the council shall be called for setting a day to choose a commissioner for electing a burghers.

Provided always, that two free days shall intervene betwixt the meeting of the council which appoints the day of election of the said commissioner, and the day on which the election of the commissioner is to be made ; and in case such chief magistrate shall neglect to indorse the day he received the precept on the back thereof, or to summon the

Two days to be allowed between the council meeting and the day of election.

Chief magistrate to indorse the

day he received
the precept.

council within the time and in the manner above directed, he shall for every such offence forfeit the sum of 100 *l.* sterling, to any magistrate or councillor of the said borough who shall sue for the same, to be recovered in manner herein after directed. *f.* 42.

Part of the act
12 Anne, re-
pealed.

By sect. 1. it is enacted, that so much of an act of parliament made in the twelfth year of the reign of her late majesty queen *Anne*, intituled, an act for the better regulating the elections of members to serve in parliament for that part of *Great Britain*, called *Scotland*, as enacts, that no person or persons, who have not been inrolled, and voted at former elections, shall, upon any pretence whatsoever, be inrolled, or admitted to vote at any election, except he or they first produce a sufficient right or title to qualify him or them to vote at that election, to the satisfaction of the freeholders formerly inrolled, or the majority of them present, and ordains the returning-officers to make their returns of the persons elected, by the majority of the freeholders inrolled, and those admitted by them, reserving always the liberty of objecting against the persons admitted to, or excluded from the roll as formerly, shall be and is hereby repealed.

Act made in
Scotland 1681,
strengthened by
this act,

And whereas the rolls of electors of commissioners to serve in parliament for the several shires and stewartries within that part of *Great Britain* called *Scotland*, have not, in every one of the said shires and stewartries, been made up every year, at the *Michaelmas* head courts, pursuant to the directions of an act of parliament made in that part of *Great Britain* called *Scotland*, in the year one thousand six hundred and eighty one, intituled, An act concerning the election of commissioners for shires; for remedy thereof, and the more effectually to carry the good intentions of the said act into execution; Be it enacted, that such persons as stand upon the roll last made up by the freeholders, whether at the *Michaelmas* meeting, or at the last election of a member to serve in parliament, shall be the original

original constituent members at their next *Michaelmas* meeting, or meeting for election, to revise the said roll. *f. 2.*

That it shall and may be lawful for any freeholder standing upon the roll, to object to the title of any person who stands at present upon the roll last made up, and for that purpose to apply at any time before the first day of *December*, which shall be in the year of our lord one thousand seven hundred and forty three, by summary complaint to the Court of Session, who shall grant a warrant for summoning such persons upon thirty days notice to answer, and shall proceed in a summary way, to hear and determine upon such complaint; and if no such complaint shall be exhibited within the time aforesaid, then and in that case no freeholder, who at present stands upon the rolls last made up in the said counties and stewartries respectively, shall be struck off or left out of the roll, except upon sufficient objections arising from the alteration of that right or title, in respect of which he was inrolled, sustained by the other freeholders standing upon the said roll. *f. 3.*

Privilege of freeholders.

That if at any *Michaelmas* meeting, or meeting for election, any person claiming to be inrolled, shall by judgement of the freeholders be refused to be admitted, or if any person who stood upon the roll, shall by like judgment be struck off, or left out of the roll; it shall and may be lawful for him or them who is so refused to be admitted, or whose name is so struck off or left out of the roll, to apply (so as such application be made within four calendar months after their being so refused, struck off, or left out) by summary complaint to the court of session, who shall grant a warrant for summoning the person or persons upon whose objection or objections he was refused to be admitted, or was struck off or left out as aforesaid, upon 30 days notice to answer, and shall proceed to hear and determine in a summary way on such complaint; and if any person shall be inrolled, whose
title

Manner of acting, when a person claims to be inrolled.

If any freeholder objects, appeal may be made to the Court of Session.

title shall be thought liable to objection, it shall and may be lawful for any freeholder standing upon the said roll (whether such freeholder was present at the meeting or not) who apprehends that such person had not a right to be inrolled, to apply in like manner by complaint to the Court of Session, so as such application be made within 4 calendar months after such inrollment; and the said court, after service of such complaint, on 30 days notice, upon the person said to be wrongfully admitted to the roll, shall in manner aforesaid hear and determine; and if no such complaint shall be exhibited within the time aforesaid, the freeholder inrolled shall stand and continue upon the roll until an alteration of his circumstances be allowed by the freeholders at a subsequent *Michaelmas* meeting, or meeting for election, as a sufficient cause for striking or leaving him out of the roll. *f. 4.*

Penalty on officers not obeying the Court of Session.

That if in any of the aforesaid cases the judgement of the Court of Session shall alter or reverse the determination of the meeting of the freeholders, by directing that any person shall be added to or expunged from the roll of election, the sheriff or stewards clerk shall, upon presenting to him the extract of such judgement, forthwith make the alteration thereby directed in the books that are kept by him; and in case of his refusal or delay, he shall forfeit 100 *l.* sterling to the person in whose favour the judgement of the Court of Session is given, to be recovered by him or his executors in the manner herein after directed. *f. 5.*

Penalty on appellant, if the Court of Session affirm the freeholders order.

That if the judgement of the freeholders refusing to admit, or striking off any person from the said roll shall be affirmed by the Court of Session, the person so complaining shall forfeit to the objector the sum of 30 *l.* sterling, with full costs of suit. *f. 6.*

Manner of acting to prevent surprise, on freeholders claiming to be inrolled;

That to prevent all surprise at the *Michaelmas* meetings, every freeholder who intends to claim to be inrolled at any subsequent *Michaelmas* meeting of the freeholders, shall for the space of 2 calendar

lendar months at least before the said *Michaelmas* meeting, leave with the sheriff or steward's clerk a copy of his claim, setting forth the names of his lands, and his titles thereto, and dates thereof, with the old extent or valuation upon which he desires to be inrolled, and in case of his neglect to leave his claim as aforesaid, he shall not be inrolled at such *Michaelmas* meeting; and in like manner, whoever intends to object to any freeholder who stands upon the roll, on account of the alteration of his circumstances, shall, at least 2 calendar months before the *Michaelmas* meeting, leave his objections in writing with the sheriff or steward's clerk as aforesaid, who is hereby required, upon receipt of the aforesaid claim or objections, to indorse on the back thereof the day he received the same, and also to give a copy of the aforesaid claim or objections to any person who shall demand the same, upon paying the legal fee of an ordinary extract of the same length. *f. 7.*

or on making objections to others already inrolled.

And whereas great difficulties have occurred in making up the rolls of electors of commissioners for shires, by persons claiming to be inrolled, in respect of the old extent of their lands, where the old extent does not appear from proper evidence, and votes have been unduly multiplied by splitting and dividing the old extent of lands, since the 16th day of *September*, 1781, for remedy thereof, be it enacted and declared by the authority aforesaid, that no person is or shall be intitled to vote for a commissioner to serve in parliament, for any shire or stewartry, in that part of *Great Britain* called *Scotland*, or to be inrolled in the roll of electors, in respect of the old extent of his lands, holden of the king or prince, unless such old extent is proved by a retour of the lands of a date prior to the 16th day of *September*, 1781, and that no division of the old extent, made since the aforesaid 16th day of *September*, 1781, or to be made in time coming by retour, or any other way, is or shall be sustained

No division of the old extent of lands, to multiply electors.

sustained as sufficient evidence of the old extent.
f. 8.

Proviso.

That lands holden of the king or prince, liable in public burdens for 400*l. Scots* of valued rent, shall in all cases be a sufficient qualification, whatever be the old extent of the said lands. *f. 9.*

How a purchaser shall act before he is inrolled;

also an heir apparent.

Persons may send their vouchers, and be inrolled, though absent.

Every one chosen in his absence to serve in parliament, shall take the freeholder's oath, before he takes his seat.

On refusing the oath, the election declared void.

That no purchaser, or singular successor, shall be inrolled till he be publickly infeoff, and his feisin registered, or charter of confirmation be exped, where confirmation is necessary one year before the inrolment; and that no heir apparent shall be inrolled, until his predecessors titles are produced, and allowed by the freeholders, as a sufficient qualification for his voting for a member of parliament; and that any person may be inrolled, though absent at the time of such inrollment, provided the titles and vouchers of his qualification are produced, and laid before the freeholders; and if any person shall be chosen a member to serve in parliament for any shire or stewartry, within that part of *Great Britain*, called *Scotland*, who shall not be present at the meeting of election; be it enacted by the authority aforesaid, that the member to serve in parliament so elected, before he takes his seat in parliament, shall take the oath appointed to be taken by every freeholder, who shall claim to vote at any election of a member to serve in parliament, by the act of the seventh year of his present majesty, (intituled, an act for the better regulating the election of members to serve in the House of Commons for that part of *Great Britain*, called *Scotland*, and for incapacitating the judges of the Court of Session, Court of Justiciary, barons of the Court of Exchequer in *Scotland*, to be elected, or to sit or vote as members of the House of Commons) before the lord steward of his majesty's household, or any person or persons authorised by him for that effect, which he or they are hereby empowered and required to administer; and if a member to serve in parliament, so elected, shall neglect or refuse to take the aforesaid oath, such election shall be void. *f. 10.*

That

That at the annual meetings of the freeholders at *Michaelmas*, the original constituent members shall be such persons only as shall stand upon the roll, that shall have been last made up, whether at a *Michaelmas* meeting, or at a meeting for an election of a member to serve in parliament, and that a copy signed and extracted of the roll made up by the freeholders at their *Michaelmas* meetings, or meetings for elections, together with the minutes of their proceedings at the said meetings, shall, by the respective clerks of such meetings, be forthwith delivered to the sheriff or steward's clerk gratis, and shall be inserted in books to be kept by the said sheriff or steward's clerk for that purpose, who shall forthwith deliver copies of the same, extracted and signed, to any freeholder who shall desire the same, paying the legal fee for an ordinary extract of the same length, and shall at every subsequent meeting at *Michaelmas*, or meeting for any election, produce the said books, for the use of the freeholders; and in case such sheriff or steward's clerk shall neglect or refuse to enter the aforesaid rolls of election, or minutes of proceedings, into books so to be kept for that purpose as aforesaid, or shall neglect or refuse to give copies thereof, extracted and signed, or shall omit to produce the books at any subsequent meeting as aforesaid, he shall for every such offence forfeit 100*l.* sterling, to be recovered by any freeholder, within such shire or stewartry, who shall sue for the same, in such manner as is hereafter directed; and if the aforesaid principal books, containing the rolls and minutes as aforesaid, shall not be produced at the *Michaelmas* meetings, or meetings for election, a copy of the said roll and minutes, extracted and signed by the sheriff or steward's clerk, shall be sufficient; and if the sheriff or steward's clerk shall give out false copies of the said roll or minutes, extracted and signed by him, he shall for every such offence forfeit 100*l.* sterling to the person to whom the false copy is given, to be recovered by him or his executors, in the manner herein after directed,

4

and

Who are to be original constituent members.

Minutes of proceedings to be entered in books kept by the sheriff, or steward's clerk.

Minute books to be produced at publick meetings.

Penalty on refusal.

Penalty on giving out false copies of the minutes.

and shall be for ever after incapable of holding or enjoying his said office. *f. 11.*

The roll of electors last made up, shall be used at the next election.

That at every election of a commissioner to serve in parliament for any shire or stewartry, within that part of *Great Britain* called *Scotland*, the roll of electors which shall be last made up by freeholders, whether at the *Michaelmas* meeting, or at the last election of a member to serve in parliament, shall be the roll to be called over by the commissioner, last elected, or in his absence by the sheriff or steward's clerk, in order to the election of preses and clerk, as also by the preses, after he is chosen, for the choice of the member to serve in parliament, and for the determination of all the questions that shall arise in the adjusting the roll, and in the course of the election, excepting so far as the said roll shall, after the meeting is duly constituted by the choice of preses and clerk, be altered by judgement of the majority of the freeholders standing on that roll, by leaving out those whose circumstances are altered, and by adding others, who produce proper titles. *f. 12.*

Penalty for taking false votes.

That at every meeting for an election of a commissioner to serve in parliament, if the commissioner last elected, or in his absence the sheriff or steward's clerk, shall, in the choice of preses or clerk, receive the vote of any person that does not stand upon the said roll, he shall, for every such offence, forfeit 300*l.* sterling to every candidate for the office of preses or clerk respectively, for whom such person shall not have given his vote, to be recovered by him or them, his or their executors respectively, in manner herein after directed; or if the commissioner last elected, or in his absence the sheriff or steward's clerk, shall, in the choice of preses or clerk, not call for, or shall refuse the vote of any person whose name is upon the said roll, he shall, for every such offence, forfeit 300*l.* sterling to the person whose name shall not be called for, or whose vote shall be refused, to be recovered by him, or his executors, in the manner

Penalty on refusing good votes.

manner herein after directed ; and if the preses after he is chosen shall, in the election of the member to serve in parliament, receive the vote of any person who does not stand upon the roll duly made by the said meeting, he shall, for every such offence, forfeit 200 *l.* sterling to every candidate for whom such person shall not have given his vote, to be recovered by him, or his executors, in the manner herein after directed ; or if the preses after he is chosen shall, in the election of the member to serve in parliament, not call for, or shall refuse the vote of any person whose name is upon the said roll so made up, as aforesaid, he shall, for every such offence, forfeit 200 *l.* sterling to the person whose name shall not be called for, or whose vote shall be refused, to be recovered by him, or his executors, in the manner herein after directed : and it is hereby declared, that in case of equality of votes in the choice of preses or clerk, the commissioner last elected, and in his absence any freeholder present who last represented the shire or stewardry in any former parliament ; and if no such person is present, the freeholder present who presided last at any meeting for any election, and in his absence the freeholder who last presided at any *Michaelmas* meeting ; and if none of the said persons shall be present, the freeholder present who stands first on the roll, shall, besides their own votes as freeholders have the casting and determining vote, and that the preses chosen, shall, after his election in the choice of the commissioner to serve in parliament, and all other questions, where the votes are equal, in like manner, besides his own vote as a freeholder, have the casting and determining vote. *f. 13.*

On equality of votes, in choosing a clerk, who shall have the casting vote.

That the persons chosen to be preses and clerk, by the majority of the freeholders present, standing on the said roll, shall be preses and clerk of the meeting for such election ; and it shall not be lawful for any number of freeholders to separate from the majority of the persons present, who stand

The clerk being chosen by the majority of freeholders, no separated party shall choose another.

Election of Members.

Penalty on separating from the freeholders.

Penalty on acting as clerk, without any authority.

Minutes of election of clerk to be signed, and delivered to the clerk chosen.

Penalty on refusing to sign, or on signing false minutes.

Clerk to make a true return.

stand upon the said roll, and set up any person as preses or clerk, other than those who shall be chosen by the majority of the freeholders present, standing on the said roll; and that it shall not be lawful for any person to act as preses or clerk at any such election, unless they are chosen by the majority of persons standing on the said roll; and every freeholder, who shall so separate from the majority of the freeholders on the roll, and set up any person as preses or clerk, other than those who shall be chosen by the majority, as aforesaid, he shall for every such offence, forfeit the sum of 50*l.* sterling, to the candidate who shall be chosen by the majority of the freeholders from whom such separation was made; to be recovered by him, or his executors, in the manner herein after directed: And if any person presume to act as preses or clerk, who is not chosen by the majority of the freeholders present standing on the said roll, he shall, for every such offence, forfeit the sum of 200*l.* sterling, to the candidate who shall be chosen by the majority of the freeholders, as aforesaid, to be recovered by him, or his executors, as herein after directed. *f.* 14.

That the commissioner last elected, or in his absence the sheriff or steward's clerk, shall sign the minutes of the election of preses and clerk, and deliver the same to the clerk chosen by the majority of the freeholders, as aforesaid; and if the commissioner last elected, or in his absence, the sheriff or steward's clerk, shall neglect or refuse to sign the aforesaid minutes of election of preses and clerk, and deliver the same to the clerk chosen, as aforesaid, or shall sign false minutes thereof, he shall, for every such offence, forfeit 100*l.* sterling to the person elected preses, as aforesaid, to be recovered by him, or his executors, in the manner hereafter directed. *f.* 15.

That the clerk chosen by the majority of the freeholders on the aforesaid roll, shall return to the sheriff or steward such person as shall be elected

ed by the majority of the freeholders on the roll made up at the meeting for election, in the manner aforesaid; and if the clerk chosen, as aforesaid, shall refuse or neglect to return the person elected by the majority of the freeholders on the roll, made up at the meeting for election, or shall return any person, other than him who shall be elected by the majority of the freeholders, as aforesaid, he shall, for every such offence, instead of the penalty or forfeiture to which he is made liable by the aforesaid act, made in the seventh year of his present majesty, forfeit the sum of 500*l.* sterling, to the candidate chosen by the majority of the freeholders on the aforesaid roll; to be recovered by him, or his executors, in the manner herein after directed. *s.* 16.

Penalty on refusing, or making a false one.

That every sheriff or steward, of any shire or stewartry, within that part of *Great Britain* called *Scotland*, upon producing to him a copy of the aforesaid roll last made up by the freeholders at the last *Michaelmas* meeting, or at the last election of a member to serve in parliament, extracted and signed by the sheriff or steward's clerk, and upon producing and shewing to him the original minutes of the election of preses and clerk signed by the commissioner last elected, or in his absence, by the sheriff or steward's clerk, shall annex to the writ, the return made by the clerk chosen by the majority of the freeholders on the aforesaid roll: And if any such sheriff or steward shall neglect or refuse to annex to the writ such return, or if he shall annex to the writ the return made by any other person pretending to be clerk to the election, he shall for every such offence, instead of the penalty or forfeiture to which he is made liable by the aforesaid act, made in the seventh year of his present majesty, forfeit 500*l.* sterling, to the person returned by the clerk, and chosen by the majority of the freeholders on the aforesaid roll, to be recovered by him or his executors, in the manner hereafter directed. *s.* 17.

Every sheriff, on producing a copy of roll last made, &c. shall annex to the writ, the return made.

Penalty for every offence.

Y

That

When the Michaelmas head court shall be held.

To be intimated in all parish churches, eight days before.

Custom of the shire of Sutherland.

Qualification of candidates and electors.

That every sheriff or steward of any shire or stewartry, within that part of *Great Britain* called *Scotland*, shall hold the *Michaelmas* head court in all time to come, on the day on which it shall appear to him to have been most usually held in times past; and to prevent all uncertainty in time coming, every sheriff or steward shall at least 14 days before *Michaelmas* next, appoint a precise day for holding his *Michaelmas* head court, in the year 1743; and shall cause intimate the day of holding his court at all the parish churches within his said shire or stewartry upon a *Sunday*, at least eight days preceding the next *Michaelmas* head court: And it is hereby declared, That the days so to be appointed by the said sheriff or steward before *Michaelmas* next, shall be the anniversary for holding the *Michaelmas* head court of the said shire or stewartry in all time coming. *f. 18.*

And whereas by the constitution of the shire of *Sutherland*, and by constant usage, the small barons of the said shire have been represented in parliament, not only by the immediate vassals of the king and prince, but also by those who held their lands of the earls of *Sutherland*, or of other subject superiors, and such vassals holding their lands of subject superiors, have been in use to vote at the election of the commissioners for the said shire of *Sutherland*, as well as the vassals of the king and prince, and that without any restriction as to the quota of the old extent, or of the valued rent of the lands, in respect whereof a right to vote at such elections, or to be elected commissioner for the said shire was claimed, and thereby votes have been unduly multiplied, and several persons have claimed a vote in respect of the superiority and property of the same lands, whereby great confusions are likely to ensue in future elections; for remedy thereof, be it further enacted, that from and after the first day of *September*, 1745, no person shall be capable to be elected commissioner for the said shire, or shall have right to vote at such election, unless he be in seof, and in possession of lands liable

able to his majesty's supplies, and other public burthens, at the rate of two hundred pounds Scots valued rent. *f.* 19.

That one person, and no more, shall be intitled to vote at such elections, or to be elected in respect of the same lands; and that where lands are now holden by any baron, or other freeholder, immediately of the king or prince, such baron or freeholder shall be capable to be elected, and shall be intitled to vote for those lands; and no vassal, or sub-vassal of the said baron or freeholder, shall have right to vote, or to be elected in respect thereof; and that where lands are now holden, or shall at any time hereafter be holden of the king or prince, by a peer or other person, or body politic or corporate, who by law are disabled to be a member of the house of commons, or to vote in such elections; in such case the proprietor and owner of such lands, and not any of his superiors, shall be intitled to vote, or to be elected, in respect of the same lands: and that no alienation of the superiority to be made by such peer, or other person, or body politic, incapable to elect or to be elected, shall deprive the proprietor and owner of the lands of his right to vote in the elections for the said shire, or his capacity to be elected; nor intitle the purchaser of the said superiority to vote, or to be elected; and that the property of lands, of the valuation aforesaid, holden in part immediately of the king or prince, and in part of a peer, or other person, or body politic, incapable to elect, or to be elected, shall be a sufficient qualification to the proprietor and owner of such lands, and shall entitle such proprietor to vote, and to be elected for the said shire. *f.* 20.

Candidates and electors to hold their lands immediately from the king or prince.

In what cases the proprietors only shall vote.

Lands held part of the king, and part of a peer, &c. shall qualify the owner to elect or be elected.

That the freeholders and proprietors, having right to elect, or to be elected a commissioner for the shire of *Sutherland*, shall meet at the head borough of the said shire, at the *Michaelmas* head court, which shall be in 1745, and shall make up roll of the electors having right to vote in the

When freeholders and proprietors shall meet and make a roll.

Election of Members.

choice of a commissioner, in the terms of this present act, and of the other acts of parliament, made touching the election of commissioners for shires in *Scotland*; and which roll, so made up, shall be revised yearly at the *Michaelmas* meetings, and at elections, according to the rules prescribed in this act, and in other acts made for regulating the elections of commissioners for shires in that part of *Great Britain* called *Scotland*: and it is hereby declared, that the said acts of parliament do extend to the shire of *Sutherland* as well as to the other shires in *Scotland*, except in so far as it is otherwise provided by this present act. *f. 21.*

At annual elections the minority shall not separate from the majority.

Penalty on offenders.

And whereas at the election of members to serve in parliament for the districts of boroughs in that part of *Great Britain* called *Scotland*, it often happens, that more persons than one claim to be admitted to vote as commissioners for the same borough, which furnishes pretences to the clerks of the presiding boroughs for partially making false and undue returns; for remedy thereof, be it enacted by the authority aforesaid, that at the annual election of magistrates and councillors, and in all the proceedings previous to the election of the magistrates and councillors for the succeeding year, it shall not be lawful for the minority of any meeting for election, either of magistrates or councillors, or deacons, or other persons, who by the constitution of the respective boroughs may have votes in the election of magistrates or councillors, to separate from the majority of those having right to act by the constitution of the burgh at such meetings, upon any pretext whatsoever; nor to make any separate election of magistrates, councillors, or electors; but the minority shall in all cases submit to the election made by the majority in all the parts of election; and if any person elected by the minority of any such meeting, shall presume to vote in the election of magistrates or councillors, or in letting the magistrates or councillors, or in any other step of the election, he shall forfeit

forfeit 100 l. sterling to any one of the majority of such meeting, to be recovered by him in the manner hereafter directed, *f. 22.*

That no person elected to be a magistrate or councillor by a minority of those having right to vote in elections of the magistrates and councillors, shall, upon any pretext whatsoever, presume to act as magistrate or councillor; and if any person shall notwithstanding presume to act as magistrate or councillor, he shall for every such offence forfeit 100 l. sterling, to the magistrates or councillors elected by the majority, or to any of them who shall sue for the same, to be recovered by him or them in the manner herein after directed. *f. 23.*

No person elected by the minority, shall have a right to act.

Penalty on acting when so chosen,

That it shall and may be lawful to and for any constituent member at any meeting for election of magistrates or councillors, or of any meeting previous to that for the election of magistrates and councillors respectively, who shall apprehend any wrong to have been done by the majority of such meeting, to apply to the said court of session, by a summary complaint for rectifying such abuse, or for making void the whole election made by the said majority, or for declaring and ascertaining the election made by the minority, so as such complaint be presented to the said court of session within two calendar months after the annual election of the magistrates and councillors; and the said court shall thereupon grant a warrant for summoning the magistrates and councillors elected by the majority, upon thirty days notice, and shall hear and determine the said complaint summarily, without abiding the course of any roll, and shall allow to the party who shall prevail, their full costs of suit, *f. 24.*

Wrongs done by the majority, may be redressed by the court of session.

And whereas the magistrates and councillors of the royal boroughs in that part of *Great Britain* called *Scotland*, by virtue of several laws now in force, are bound to take and subscribe the oath of allegiance, subscribe the assurance, and to take and sign the oath of abjuration, for and on account of

Manner of magistrates and councillors taking the several oaths.

their election into their respective offices ; and that in his majesty's courts of Session, Justiciary, or Exchequer at *Edinburgh*, or at the quarter sessions of the respective shires and stewartries, within which the royal boroughs are situate, which has been found by experience to be attended with great trouble and expence to the said magistrates and councillors ; for remedy thereof, be it enacted, that it shall and may be lawful to the said magistrates and councillors to take and subscribe the oath of allegiance, subscribe the assurance, and take and sign the oath of abjuration, before the council of their respective boroughs ; and which oaths the chief magistrate, or any other magistrate of the said boroughs respectively, is hereby empowered and required to administer ; and the oaths so taken, shall be equal in all respects as if they had been taken in the courts, and before the judges directed by the several acts of parliament above referred to. *f. 25.*

The clerk to sign the commission, and fix the seal of the borough.

That at every election of commissioners for choosing burgeses for any district of boroughs in that part of *Great Britain* called *Scotland*, the common clerk of each borough within the said district, shall make out a commission to the person chosen commissioner by the major part of the magistrates and town council assembled for that purpose ; which magistrates and town council shall take the oath of allegiance, and sign the same with the assurance, and shall take all the other oaths appointed to be taken at such election, by this or any former act, if required ; and the said clerk shall affix the common seal of the borough thereto, and sign such commission, and shall not on any pretence whatsoever make out a commission for any person as commissioner, other than him who is chosen by the majority as aforesaid ; and if any common clerk of any borough shall neglect or refuse duly to make out and sign a commission to the commissioner elected by the majority as aforesaid, and affix the seal of the borough thereto ; or if he shall make out

out and sign a commission to any other person who is not chosen by the majority, or affix the common seal of the borough thereto; he shall for every such offence forfeit the sum of five hundred pounds sterling, to the person elected commissioner for the said borough as aforesaid, to be recovered by him or his executors in the manner herein after directed, and shall also suffer imprisonment for the space of six calendar months, and be for ever after disabled to hold or enjoy the said office of common clerk of the said borough, as effectually as if he was naturally dead. *f. 26.*

That if any other person who is not the common clerk of the borough, shall take upon himself to act as such in any election of a commissioner for choosing a burghers for any district of boroughs in that part of *Great Britain* called *Scotland*, and shall make out a commission for any other person as commissioner, other than the person who was chosen by the majority as aforesaid, and shall sign or affix the common seal of the borough thereto; he shall for every such offence forfeit 500*l.* sterling, to the person elected commissioner for the said borough as aforesaid, to be recovered by him or his executors in the manner herein after directed. *f. 27.*

Penalty on any person acting as clerk, and making out wrongful commissions.

And whereas by an act passed in that part of *Great Britain* called *Scotland*, the fifth day of *February*, 1707, intituled, *an act for settling the manner of electing the sixteen peers, and forty five commoners, to represent Scotland in the parliament of Great Britain*; it is amongst other things enacted, that where the votes of the commissioners for the said boroughs met to choose representatives from their several districts to the parliament of *Great Britain*, shall be equal; in that case, the president of the meeting shall have a casting or decisive vote, and that by and attour his vote as a commissioner from the borough from which he is sent, but no provision is made in case of the absence of the commissioner from the presiding borough, or of his re-

Who shall act in
absence of the
presiding com-
missioners.

fusing to vote at such election; for remedy thereof, be it enacted by the authority aforesaid, that if the commissioner from the presiding borough shall be absent from the meeting of commissioners for choosing burgesses to serve in parliament, or shall refuse to vote at such election, the commissioner from the borough which was the presiding borough at the last election; and if he also be absent, or shall refuse to vote, as aforesaid, the commissioner from the borough which was the presiding borough at the election immediately preceding the last, and in case he shall be likewise absent, or shall refuse to vote as aforesaid, the commissioner from the borough which was the last presiding borough but two, shall have in the aforesaid respective cases, besides his own vote, the casting or decisive vote.
s. 28.

No objection
against non res-
dents, &c.

That it is no objection to any commissioner for choosing a burgess that he is not a residenter within the borough bearing all portable charges with his neighbours, or that he is no trafficking merchant therein, or that he is not in possession of any burgage lands or houses holding of the said borough, and that such qualifications need not be engrossed in his commission. s. 29.

What votes shall
be allowed.

That at all meetings of commissioners for choosing burgesses to serve in parliament, the common clerk of the presiding borough shall allow the votes of such persons only who produce commissions authenticated by the subscription of the common clerk, and the common seal of the respective boroughs within the district, and shall return to the sheriff or steward the person elected by the major part of the commissioners assembled, whose commissions are authenticated as aforesaid; and if he neglect or refuse to return such persons so elected to the sheriff or steward, or if he shall return to the sheriff or steward, any person other than him who is so elected, he shall, for every such offence, instead of the penalty or forfeiture to which he is made liable by the aforesaid act made in the 7th year

year of his present majesty, forfeit 500*l.* sterling, to the candidate elected by the majority of the commissioners assembled whose commissions are authenticated as aforesaid; to be recovered by him, or his executors, in the manner herein after directed, and he shall also suffer imprisonment for 6 calendar months, and be for ever after disabled to hold or enjoy his said office of common clerk of the said presiding borough as if he was naturally dead. *f.* 30. Penalty.

That every sheriff or steward in that part of *Great Britain* called *Scotland*, shall annex to the writ the return made by the aforesaid clerk of the presiding borough; and if any such sheriff or steward neglect or refuse to annex to the writ such return, or if he shall annex to the writ any return made by any other person, he shall, for every such offence, instead of the penalty or forfeiture to which he is made liable by the aforesaid act made in the seventh year of his present majesty, forfeit 500*l.* sterling to the candidate returned by the aforesaid clerk of the presiding borough, to be recovered by him, or his executors, in the manner herein after directed. *f.* 31. Writ and return to be annexed.

Provided always, That if any person to whom no commission is made out, as aforesaid, shall insist that he was duly elected the commissioner from any royal borough, the person so claiming shall be admitted to the meeting of the commissioners for choosing burgessees to serve in parliament, and may at the said meeting make offer of taking all the oaths required by law, and declare for whom he would have voted, had he been duly commissioned; which oaths, the clerk of the presiding borough is hereby required and impowered to administer, and the said clerk shall also set down in the minutes of proceedings, the declaration of such person as to the candidate for whom he would have voted, had he been duly commissioned; but the said clerk, shall upon no pretence whatsoever, receive Penalty.

Election of Members.

receive or consider such person as a legal voter, or such declaration as a legal vote, at such election,
f. 32.

*Act 2 Geo. 2.
 confirmed.*

And whereas, doubts have arisen, whether the act of parliament made in the second year of the reign of his present majesty, intituled, An act for the more effectual preventing bribery and corruption in the election of members to serve in parliament, extends to the electors of commissioners for choosing burgeses; be it hereby enacted by the authority aforesaid, That the electors of commissioners for any royal borough, within that part of *Great Britain* called *Scotland*, for choosing burgeses to parliament, are within the true intent and meaning of the said act, to be considered as electors of the member to serve in parliament, and shall be so deemed and adjudged to all intents and purposes whatsoever, and shall be liable to all the provisions, forfeitures, and incapacities, to which persons voting or claiming to vote for any member to serve in parliament, are made liable by the said act.

f. 33.

And be it further enacted by the authority aforesaid, That at every election of commissioners for choosing burgeses for the several districts of boroughs in that part of *Great Britain* called *Scotland*, and at the election of a burges to serve in parliament for the city of *Edinburgh*; every magistrate, town councillor, or person having or claiming to have a right to vote at such election, instead of the oath prescribed to be taken by the said act, before he is admitted to vote at the same election, shall take the following oath, in case the same shall be demanded by any one of the electors; and which oath, any of the magistrates, or in their absence, any of the town council, are hereby impowered and required to administer;

Oath to be taken
 by the magis-
 trates at the
 election of a bur-
 ges, &c.

“ I A. B. do solemnly swear, That I have not di-
 “ rectly or indirectly, by way of loan or other device
 “ whatsoever, received any sum or sums of money,
 “ office, place, employment, gratuity, or reward, or
 “ any

“ any bond, bill, or note, or any promise of any sum
 “ or sums of money, office, place, employment, or gra-
 “ tuity whatsoever, either by myself or any other, to
 “ my use, or benefit, or advantage, or to the use, be-
 “ nefit, or advantage of the city or borough of which I
 “ am magistrate, councillor, or burgeses, in order to
 “ give my vote at this election.”

So help me God.

That in all elections of commissioners for chusing burgeses, and before they proceed to election, the common clerk of each borough shall take and subscribe the oath following, which any of the magistrates, or in their absence, any two of the town council, are hereby impowered and required to administer. s. 35.

“ I A. B. do solemnly swear, That I have not
 “ directly or indirectly, by way of loan or other device
 “ whatsoever, received any sum or sums of money,
 “ office, place, employment, gratuity, or reward, or
 “ any bond, bill, or note, or any promise, of any sum,
 “ or sums of money, office, place, employment, or
 “ gratuity whatsoever, either by myself or any other,
 “ to my use, or benefit, or advantage, to make out any
 “ commission for a commissioner for chusing a burgeses;
 “ and that I will duly make out a commission to the
 “ commissioner who shall be chosen by the majority of
 “ the town council assembled, and to no other per-
 “ son.”

Oath to be taken
 by the common
 clerk, before the
 election of com-
 missioners to
 choose burgeses.

So help me God.

And that at all meetings of the commissioners for chusing burgeses to serve in parliament, and before they proceed to the election, the clerk of the presiding borough shall take and subscribe the following oath, which the commissioner for the presiding borough, or in his absence, any other of the commissioners is hereby required and impowered to administer.

“ I A. B. do solemnly swear, that I have not direct-
 “ ly or indirectly, by way of loan, or other device
 “ whatsoever, received any sum or sums of money,
 “ office,

Oath of the clerk
 of the presiding
 borough before
 election.

Election of Members.

“ office, place, employment, gratuity, or reward, or
 “ any bond, bill, or note, or any promise of any sum or
 “ sums of money, office, place, employment, or gratuity
 “ whatsoever, either by myself, or any other to my use,
 “ or benefit, or advantage, to make any return at this
 “ election of a member to serve in parliament; and
 “ that I will return to the sheriff or steward, the per-
 “ son elected by the major part of the commissioners
 “ assembled, whose commissions are authenticated by the
 “ subscription of the common clerk, and common seal
 “ of the respective boroughs of this district.”

So help me God.

Penalty on the
 clerk or the pre-
 siding borough's
 neglect.

That if the clerk of the presiding borough, shall neglect or refuse to take the oath aforesaid, such clerk so refusing or neglecting, shall be incapable to act as clerk to the said meeting; and it shall be lawful to, and for the said commissioners, and they are hereby empowered and required to choose another clerk to the meeting for the election, and who shall have all the powers and authorities in the said meeting, and in the returning the member chosen by them, that by law are competent to the clerk of the presiding borough. *f. 37.*

That at all the elections of a member to serve in parliament for any county or stewartry, in that part of *Great Britain* called *Scotland*, the clerk chosen by the majority of such persons as stand upon the said roll last made up by the freeholders, whether at the *Michaelmas* court, or at the last election of a member to serve in parliament, shall immediately after his election, take and subscribe the following oath, which the preses of the meeting is hereby required and empowered to administer. *f. 38.*

Oath of the
 clerk at election
 of members.

“ I A. B. do solemnly swear, that I have not direct-
 “ ly or indirectly, by way of loan or other device what-
 “ soever, received any sum or sums of money, office,
 “ place, or employment, gratuity, or reward, or any
 “ bond, bill, or note, or any promise of any sum or
 “ sums of money, office, place, employment, or gra-
 “ tuity,

"tuity whatsoever, by myself, or any other to my use,
 "or benefit, or advantage, to make any return at the
 "present election of a member to serve in parliament;
 "and that I will return to the sheriff or steward, the
 "person elected by the majority of the freeholders upon
 "the roll made up at this election, and who shall be
 "present and vote at this meeting."

So help me God.

And whereas, by the said act of parliament, made in the second year of the reign of his present majesty, it is enacted, That every sheriff, mayor, bailiff, head borough, or other person, being the returning officer of any member to serve in parliament, shall immediately after reading the writ or precept for the election of such members, take and subscribe the oath contained in the aforesaid act; be it enacted by the authority aforesaid, That so much of the said act as requires the said oath to be taken by any returning officer, within that part of Great Britain called Scotland, shall be, and is hereby repealed. *f. 39.*

Repeal of part of the act 2 Geo. 2.

That if any person shall presume wilfully and falsely, to swear and subscribe any of the oaths required to be taken by this act, and shall thereof be lawfully convicted, he shall incur the pains and punishments of perjury, and be prosecuted for the same according to the laws and forms in use in Scotland. *f. 40.*

What shall amount to conviction of perjury.

Penalties to be recovered by way of summary complaint before the Court of Session, on 30 days notice, and not to be commenced within one year after incapacity, disability, forfeiture, or penalty incurred. *f. 43, 44.*

Penalties, how to be recovered, and limitation of action.

Election of Members.

*A List of the Counties, Cities and Boroughs of
England, in the Order in which their Repre-
sentatives are called over in the House.*

Bedfordshire.
Bedford.

Berkshire.
Reading
Abingdon
Windsor
Wallingford.

Bucks.
Buckingham
Wycomb
Aylesbury
Marlow
Wendover
Agmondesham.

Cambridgeshire.
Cambridge, Un.
Cambridge, T.

Cheshire.
Chester.

Cornwall.
Launceston
Liskeard
Lestwithiel
Truro
Bodmyn
Helston
Saltash
East-Looe
West-Looe

Grampound
Camelford
Penryn
Tregony
Bosfinney
St. Ives
Fowey
St. Germans
Mitchell
Newport
St. Mawes
Callington.

Cumberland.
Carlisle
Cockermouth.

Derbyshire.
Derby.

Devonshire.
Ashburton
Tiverton
Dartmouth
Okehampton
Honiton
Plymouth
Beeralston
Plympton
Totness
Barnstaple
Tavistock
Exeter

Dorsetshire.

Election of Members.

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Dorsetshire.

Dorchester
Lyme
Weymouth & Melcomb
Bridport
Shaftsbury
Wareham
Corfe-castle
Poole.

Durham.

Durham.

Essex, or Yorkshire.

Aldborough
Boroughbridge
Beverley
Hedon
Knaresboro'
Malton
Northallerton
Pontefract
Richmond
Ripton
Scarborough
Thirsk
York
Kingston.

Essex.

Colchester
Malden
Harwich.

Gloucestershire.

Tewksbury
Cirencester
Gloucester.

Herefordshire.

Hereford
Leominster
Weobly.

Hertfordshire.

Hertford
St. Alban's.

Huntingdonshire.

Huntingdon.

Kent.

Rocheſter
Queenſborough
Maidſtone
Canterbury.

Lancashire.

Lancaster
Preston
Liverpool
Wigan
Clitheroe
Newton.

Leicestershire.

Leicester.

Lincolnshire.

Stamford
Grantham
Boston
Grimſby
Lincoln.

Middlesex.

Westminster
London.

Monmouthshire.

Election of Members.

Monmouthshire.

Monmouth:

Norfolk.

Lynn
 Yarmouth
 Thetford
 Castle Rising
 Norwich.

Northamptonshire.

Peterborough
 Northampton
 Brackley
 High. Ferrers.

Northumberland.

Morpeth
 Newcastle-upon-Tyne
 Berwick.

Nottinghamshire.

East Retford
 Newark
 Nottingham:

Oxon.

Oxford, Un.
 Oxford, City
 Woodstock
 Bambury

*Rutlandshire.**Shropshire.*

Shrewsbury
 Ludlow
 Bridgnorth
 Wenlock

*Bishops-castle.**Somersetshire.*

Taunton
 Ivelchester
 Milborne
 Wells
 Bridgwater
 Bath
 Minehead
 Bristol.

Southampton, or Hants.

Winchester
 Portsmouth
 Newport
 Yarmouth
 Newtowne
 Lymington
 Christchurch
 Andover
 Whitchurch
 Petersfield
 Stockbridge
 Southampton

Staffordshire.

Stafford
 Tamworth
 Newcastle
 Litchfield

Suffolk.

Ipswich
 Dunwich
 Orford
 Aldeburgh
 Sudbury
 Eye
 Bury.

Surrey.

Election of Members.

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Surrey.

Gatten
Haslemere
Blechingly
Reigate
Guildford
Southwark.

Worcestershire.

Evesham
Droytwick
Bewdley
Worcester.

Sussex.

Horsham
Bramber
Shoreham
Midhurst
E. Grinstead
Steying
Arundell
Lewes
Chichester

Wiltshire.

New Sarum
Devizes
Marlborough
Chippenham
Calne
Malmesbury
Cricklade
Hindon
Old Sarum
Heytesbury
Westbury
Wotton Bassett
Ludgerthall
Wilton
Downton
Great Bedwin
Cinque ports
Wales
Scotland.

Warwickshire.

Warwick
Coventry.

Westmoreland.

Appleby

Scotland 45 Members.

Aberdeenshire.

Aberbrothock
Aberdeen
Montrose
Brechin
Inverbervie.

Bamffshire.

Berwickshire.
Caithnessshire.

Craill
Kilrenny
Anstruther-Easter
Pittenweem, and
Anstruther-Wester

Airshire.

Argylshire.

Z

Culrofs

Election of Members.

Culrofs	}	<i>Kincardineshire.</i>	}
Dumfermling		<i>Kinrosshire.</i>	
Innerkeithing		Kintore	
Queensferry, and		Bamff	
Stirling	}	Cullen	}
Cupar		Elgin, and	
Perth		Inverurie.	
Dundee		Kirkudbright Stewartry.	
St. Andrews, and	}	Kirkaldy	}
Forfar.		Bruntisland	
		Kinghorn, and	
		Dysart.	
<i>Dumbartonshire.</i>			
Dumbarton	}	<i>Lanarkshire.</i>	}
Rutherglen		Lauder	
Glasgow, and		Haddington	
Renfrew.		Dunbar	
<i>Dumfrieshire.</i>		North Berwick, and	}
Dumfries	}	Jedburgh.	
Sanquhar		<i>Linlithgowshire.</i>	
Kirkudbright		<i>Cromartyshire.</i>	
Lochmaben, and		<i>Orkney and Zetlandshire.</i>	}
Annan.		<i>Peebleshire</i>	
		<i>Perthshire</i>	
<i>Edinburghshire.</i>		<i>Renfrewshire.</i>	
Edinburgh, C.		<i>Rossshire</i>	}
<i>Elginshire</i>		<i>Roxburghshire</i>	
<i>Fifehire</i>		<i>Selkirkshire.</i>	
<i>Forfarshire</i>		Selkirk	
<i>Haddingtonshire</i>		Lanerk	}
<i>Invernesshire.</i>		Peebles, and	
Inverness	}	Linlithgow.	
Nairne		<i>Stirlingshire.</i>	
Forreſs, and		Stranrawer	}
Fortroſe		Wigtown	
Irvine	}	Whitehorn, and	
Air,		New Galloway.	
Rothſay		<i>Sutherlandshire</i>	}
Inverary, and		<i>Wigtownshire.</i>	
Cambletown.			

Wick

Wick,
Tain,
Dingwall
Dornock, and
Kirkwall.

}

Juries.

THE trial *per pais*, or by a jury of one's country, is justly esteemed one of the chiefest excellencies of our constitution; for what greater security can any person have in his life, liberty or estate, than to be sure of not being divested of, or injured in any of these, without the sense and verdict of "*twelve honest and impartial men of his neighbourhood?*" And hence we find the common law herein confirmed by the great charter. 9 H. 3. "*No freeman shall be taken or imprisoned, or be disseised of his freehold, or liberties or free customs, or be outlawed or exiled, or any otherwise destroyed, nor we will not pass upon him, but by lawful judgement of his peers, to or by the law of the land.*" *Fortesc. 2. c. 25. Co. Litt. 155.*

Trial by jury esteemed one of the chiefest excellencies of this constitution.

This trial hath been used time out of mind in this nation, and seems to have been co-eval with the first civil government thereof. Some have endeavoured to trace the original of juries up as high as the *Britons* themselves, the first inhabitants of our island; but certain it is, that they were in use among the earliest *Saxon* colonies, this institution being ascribed by Bishop *Nicholson*, *de jure Saxo-num* p. 12. to *Woden* himself their great legislator and captain. In *England* we find mention of them so early as the laws of king *Ethelred*, and that not as a new invention. *Sp. L. b. 30. c. 18.* Its establishment in this island though for a time greatly impaired and shaken by the introduction of the *Norman* trial by *battell*, was always so highly esteemed and valued by the people, that no conquest,

This trial hath been time out of mind.

Its establishment in this country so highly esteemed, that no conquest, &c. could ever abolish it.

no change of government, could ever prevail to abolish it. *Vide Spel. Gloss. verbo, Jurata. Glanv. lib. 2. c. 7.*

In civil causes
two kinds.

Trials by jury in civil causes are of two kinds; *extraordinary* and *ordinary*.

Grand assize
first species of
extraordinary
trial.

The first species of *extraordinary trial* by jury is, that of the *grand assize*, instituted by king Henry the second, instead of the barbarous and unchristian custom of duelling. For this purpose a writ *de magna assisa eligenda* is directed to the sheriff *F. N. B. 4.* to return 4 *knights*, who are to elect and choose 12 others to be joined with them, and these altogether form the grand assize, or great jury, which is to try the matter of right, and must consist of sixteen jurors. *Finch. l. 412. 1 Leon. 303.*

Trial on attaint
the second.

Another species of extraordinary juries, is to try an attaint, which is a process commenced against a former jury, for bringing in a false verdict, and consists of 24 of the best men of the county, who are to hear and try the goodness of the former verdict; this is now disused, a better remedy for the parties being adopted.

Ordinary trial.

Veniri part.]

With regard to the *ordinary trial* by jury in civil cases, it is this: when the parties are at issue to the country, "the sheriff is commanded to come before the king at Westminster, twelve free and lawful men of the body of his county, by whom the truth of the matter may be the better known, and who are neither of kin to the plaintiff or defendant, to recognize of the truth of the issue between the parties," which writ is made returnable before the trial; therefore the jury must unavoidably make a default. For which reason a compulsive process is now awarded against the jurors in the *king's-bench*, called a *distringas*, in the *common pleas*, a *habeas corpora juratorum*, commanding the sheriff to distrain them by their lands and goods, or to have their bodies that they may appear in court on the day appointed by this writ.

By

By virtue of this writ, the sheriff issues his precept to his bailiff, to summon the jury to be on the day, and at the place therein mentioned, which being done, the sheriff returns the writ executed to the court, with a panel annexed of the names and places of the jurors so summoned, on a piece of parchment.

Sheriff, by virtue of this writ, issues his precept to his bailiff.

The writ of venire and distringas, are returned thus,

The execution of this writ appears in the panel annexed. The answer of J. B. Esq. sheriff.

Return of ven. and distringas.

Middlesex, } The names of the jury between John to wit, } Denn, plaintiff, and Richard Fenn, defendant, of a plea of debt.

Hundred of O.

John Doe of B. peruke maker, (here insert the 48 jurors summoned to appear,) then at the foot say,

Summoners are, John Doe. and Richard Roe.

Issues upon each of them, 40 s.

A copy of the names are to be made on strong paper, to put in a box with the additions, as in the panel to be delivered to the marshall.

But, if the sheriff be not an indifferent person, as if he be a party in the suit, or be related by either blood or affinity to either of the parties, he is not then trusted to return the jury; but the venire shall be directed to the coroners, who in this, as in many other instances, are the substitutes of the sheriff, to execute process when he is deemed an improper person. If any exception lies to the coroners, the venire shall be directed to two clerks in court, or two persons of the county named by the court, and sworn. *Co. Litt. 158. a. 2 Roll. Abrid. 671. Fortesc. de Laud. c. 25.* And these two, who are called Elifors, shall indifferently name the jury, and their return is final.

If sheriff be not indifferent, coroner to return the jury.

Elifors.

With respect to trial on the criminal side, it may be observed, that the founders of the English laws,

Trial on criminal side.

The liberties of
England cannot
but subsist.

have with excellent fore-cast contrived, that no man should be called to answer to the king for any capital crime, unless upon the preparatory accusation of twelve or more of his fellow subjects, the *grand jury*; and that the truth of every accusation, whether preferred in the shape of indictment, information, or appeal, should afterwards be confirmed by the unanimous suffrage of *twelve* of his *equals* and *neighbours*, indifferently chosen, and superior to all suspicion. So that the liberties of *England*, cannot but subsist so long as this *palladium* remains sacred and inviolate; not only from all open attacks, (which none will be so hardy as to make) but also from all secret machinations, which may sap and undermine it; by introducing new and arbitrary methods of trial, by justices of the peace, commissioners of the revenue, and courts of conscience.

What has been said of juries in general, and the trial thereby in civil cases, will greatly shorten the present remarks, with regard to the trial of criminal suits, indictment, informations, and appeals.

When prisoner
has pleaded, the-
riff must return
a panel of jurors.

When a prisoner on his arraignment, has pleaded not guilty, and upon his trial, hath put himself upon the country, which country the jury are; the sheriff of the county must return a panel of jurors, *liberos et legales homines de vicineto*; that is, freeholders without just exception, and of the visne or neighbourhood; which is interpreted to be of the *county* where the fact is committed.

If proceedings in
K. B.

2 *Hal. P. C.* 264. If the proceedings are before the court of King's Bench, there is time allowed between the arraignment and the trial, for a jury to be impannelled by writ of *venire facias* to the sheriff, as in civil causes: And the trial in the case of a misdemeanor is had at *nisi prius*, unless it be of such consequence, as to merit a trial at bar; which is always invariably had when the prisoner is tried for any capital offence.

But

But before commissioners of oyer and terminer and gaol delivery, the *sheriff*, by virtue of a general precept directed to him beforehand, *returns* to the court a panel of 48 jurors, freeholders of 10 l. per annum, to try all felons that may be called upon their trial at that session; and therefore, it is there usual to try all felons immediately, or soon after their arraignment; but for misdemeanors, security is usually given to appear, at the next assize or session to try the traverse, giving notice to the prosecutor of the same.

But before commissioners of oyer and terminer.

The sheriff must return more than twelve for the grand jury, and generally an odd number, as 17, 19, or 21, are sworn to prevent the inconvenience of an equal number of voices, on a division, to retard finding a bill, though 12 are to agree, or it will be void.

Forty eight of the grand inquest, each to have 80 l. per annum, land, are to be summoned for York assizes, and 48 at the sessions. 7 & 8 W, 3. c. 32. s. 8.

Civil Side.

IT appears by the stat. 13 Ed. 1. c. 28. That in one assize, no more shall be summoned than 24; and old men above 74, and such as be sick at the time of the summons, or not dwelling in that county, shall not be put in juries or petty assizes; and if such assizes and juries be taken out of the shire, none shall pass in them, but those that may dispend 40 s. yearly at least, except such as be witnesses in writings; neither shall this statute extend to great assizes; and if the sheriff or bailiff offend, damages shall be awarded to the parties grieved and amerced, and justices assigned to take assizes, shall have power to hear thereof.

In one assize, no more than 24, old men above 74, and sick or not dwelling in the county, are not to be put on juries.

By stat. 21 Ed. 1. No sheriff, nor bailiff, shall put in any recognizance, that shall pass out of their

Jurors to have 40s. in freehold, which pass on trials.

their proper bailiwicks, any (except they have lands to the yearly value of 100s.) Nor shall impanel in juries, except he have lands, &c. to the yearly value of 40s. 28 Ed. 1. stat. 3: c. 9. They are not to be suspected nor procured. 25 Ed. 3. c. 4:

Sheriffs to array the panels before sessions, what time to return, and sort of persons.

By 42 Ed. 3. c. 11. Sheriffs shall array the panels in assizes 4 days before the sessions of the justices. And bailiffs of franchises shall make their answer 6 days before the session, and sheriffs shall put in the most substantial people, worthy of credit and not suspect, and the nearest.

Every juror returned for the trial of any issue or cause, ought to have these three properties.

Properties of jurors.

1. *To be dwelling most near to the place where the question is moved, or where the lands do lie.*

2. *To be most sufficient, both for understanding and competency of estate.*

3. *To be least suspicious, but one indifferent as he stands unsworn, and then he is accounted liber et legalis homo, and that otherwise he may be challenged.* Co. Litt. 156. b.

Sufficiency of freehold, in the county.

They must have sufficiency of freehold, in that county where the cause of action ariseth: And must be of the shire, and some of the hundred where the land lies, or where the fact is supposed to be done.

All jurors to have 10l. per annum.

It appears by several statutes, that jurors were to have freeholds from 40s. to 4l. but the statute of 4 W. & M. c. 24. s. 15. enacts, That all jurors, (other than strangers upon trials, *per mediatum linguæ*) shall have 10l. by the year of freehold, or copyhold, or ancient demesne, or in rent, fee simple, fee tail, or for life, for trial of issues joined in the *king's bench*, *common pleas*, or *exchequer*, or before justices of *assize*, or *nisi prius*, *oyer and terminer*, *gaol delivery*, or *quarter sessions*, in any county of *England*. In *Wales*, 6l. a year, and the sheriff shall not return any person, unless he have 10l. or 6l. respectively by the year, at least in the county, on pain of 5l. to their majesties.

Welsh jurors 6l.

No

No sheriff, &c. shall return any person to have been summoned, unless he has been so, six days before the day of appearance, nor take reward to excuse any juror, on pain of 10*l.* to their majesties. *f.* 16. Saving to all cities, boroughs, and towns corporate, their antient usage of returning jurors. *f.* 17. But it shall be lawful to return any person upon the *tales* in *England*, who shall have within the county 5*l.* by the year, and not otherwise. *f.* 18. In *Wales*, 3*l.* by the year. *f.* 19. No fee to be taken by any sheriff for return of *tales*, on pain of 10*l.* to the king and informer.

Not to return unless he has been 6 days summoned.

Saving to cities their right.

Tales,

By 7 *W.* 3. c. 32. *f.* 3. If a full jury does not appear, sheriff shall upon awarding the *tales*, return freeholders, or copyholders of the county, who shall be returned on some other panel to serve at the same assizes, and not others, if so many out of the other panels be present, or can be found, and if any so returned, shall wilfully withdraw from the service, the judge to fine them.

If a full jury do not appear, others returned on some other panel to serve on the tales.

And that all sheriffs of counties may be the better informed of persons qualified, who are to be returned for trials of issues joined in the courts of Chancery, King's Bench, Common Pleas, or Exchequer, or to serve upon juries at assizes, sessions of *oyer and terminer*, general goal delivery and sessions of the peace: Be it further enacted, That all constables, tythingmen and head-boroughs of towns in each county, or their deputies, or some or one of them, shall yearly, at the general quarter sessions of the peace, to be holden for each county, riding, or division, or any part thereof, in the week after the feast of *St. Michael* the archangel, upon the first day of the said sessions, or upon the first day that the said sessions shall be held by adjournment, at any other particular division or place, return, and give a true list in writing, of the names and places of abode of all persons within the respective places for which they serve, qualified to serve upon such juries, with their titles and additions, between the age of one and twenty

Constables to return to the sessions, lists of jurymen, with their places of abode, and titles.

Between the age of 21 and 70.

twenty years, and the age of seventy years, to the justices of the peace in open court; which said justices, or any two of them, at the said sessions, in the respective counties, ridings or divisions, shall cause to be delivered a duplicate of the aforesaid returned list, by the clerks of the peace of every county or riding, to the sheriffs or their deputies, on or before the first day of *January* next following, and cause the said lists to be fairly entered into a book, by the clerk of the peace, to be by him provided and kept for that purpose amongst the records of the said court of sessions; and no sheriff shall impanel or return any person or persons, to try any of the issues joined in any of the said courts, or to be, or serve in any jury, at the assizes, sessions of *oyer and terminer*, gaol delivery, or sessions of the peace, that shall not be named or mentioned in the said list; and any constable, tythingman or head-borough, failing at any time to make the return aforesaid, shall forfeit five pounds to his majesty and successors, to be recovered by bill, plaint or information. *§. 4.*

No sheriff to impanel persons not named in the said lists.

Penalty.

Jurors how to be summoned.

Summons to be made by the sheriff under seal, 6 days before the juror to serve.

In case of absence notice to be left under officer's hand.

And that the summons of persons qualified for the services aforesaid, may not be so uncertain, as hath been practised by officers therein, that every summons of any person qualified to any of the aforesaid services, shall be made by the sheriff, his officer or lawful deputy, six days before, at the least, shewing to every person so summoned, the warrant under the seal of the office, wherein they are nominated and appointed to serve; and in case any juror so to be summoned, be absent from the usual place of his habitation at the time of such summons, in such case, notice of such summons shall be given, by leaving a note in writing under the hand of such officer, containing the contents thereof, at the dwelling house of such juror, with some person there inhabiting in the same. *§. 5.*

And to the end that sheriffs may not incur any penalty, to suffer any damage by summoning or returning any person named in the lists or books

of jurors, transmitted to them from the respective quarter sessions, as aforesaid, for not having such estates as qualifies such persons to be jurors, be it enacted by the authority aforesaid, that the said return to the said justices, shall be a good excuse and bar in law for the said sheriff, for such summons and returns; and if any action or information shall be brought or prosecuted against any sheriff for such return, the said sheriff may plead the general issue, and give this act in evidence; and if the plaintiff be nonsuited, discontinue his action, or if a verdict be given for the defendant, or a *noli prosequi* be entered in any information, or a verdict pass for the defendant thereupon, the plaintiff or informer shall pay treble costs, and if the said sheriff, his deputy, bailiff, &c. shall summons and return any freeholder or copyholder, to any of the aforesaid services, otherwise than as aforesaid, or neglect his or their duty in the service of them required, or excuse any person for favour or reward, or allow of any writ of *non ponendis in assizis & juratis*, or other writ, to excuse or exempt any person or persons, from the service of any jury under the age of 70; such sheriff, &c. shall, forfeit 20 l. to be recovered by the party grieved, or whom shall sue for the same, in any of the courts of record at *Westminster*, by action of debt, &c. s. 6.

Return to the justices good excuse to the sheriff, who may plead the general issue, in case action brought.

Penalty on sheriff neglecting, or making undue return.

That from and after the four and twentieth day of June, 1696, no person shall be returned or summoned to serve upon any jury at the assizes, or general gaol delivery, to be holden for the said county of *York*, or at any sessions of the peace, to be holden for any part thereof (the city of *York* and county of the said city, and town and county of *Kingston* upon *Hull* excepted) above once in four years; and every sheriff of the said county for the time being, shall prepare and keep a book or register, wherein the names of all such persons who have served as jurors, with their additions and places of abode, and the times and places of such their services shall be alphabetically entered and registered,

In Yorkshire jurymen to serve but once in four years.

City and Hull excepted.

Sheriff of York to register the names of all who serve on juries in a book, and juror may have his name entered, and certificate gratis.

which books, &c. shall from time to time be delivered over to the succeeding sheriff of the said county, within ten days after he shall be sworn into his office; and every juror who shall be summoned, and shall serve at any the said assizes, general gaol delivery, or sessions aforesaid, shall and may, at the end of every such assize, and general gaol delivery, or sessions aforesaid, repair to the sheriff or undersheriff of the said county for the time being, to have his and their names entered in the said book, or register, kept for the purpose aforesaid, of which he shall have a certificate, upon his immediate request, *gratis*, from the sheriff, or undersheriff for the time being, testifying such his attendance and service done. *f. 7.*

One panel of 48
freeholders, &c.

And no more
than 10 panels
of 24.

That from henceforth, only one panel, consisting of forty eight freeholders and copyholders, and no more (each person having 80 *l.* land *per annum*) shall be returned to serve on the grand inquest, and no more than 10 panels, consisting of 24 jurors in each panel, shall be returned to serve upon trials in civil causes, at any assizes to be holden for the said county of *York*, (except where special juries are directed) and that at no one quarter sessions of the peace, to be holden for the said county, or within any of the ridings within the same, or in any place where such sessions of the peace shall be holden by adjournment, or otherwise, within the same county, shall be returned above the number of forty persons, to serve either upon the grand inquest or other service there. *sect. 8.*

Inhabitants of
Westminster ex-
empted from
serving in Mid-
dlesex.

That from henceforth, the said inhabitants of the city and liberty of *Westminster* shall be, and are hereby exempted from serving in any jury at the sessions, before the justices of the peace for the county of *Middlesex*. *f. 9.*

Neither of the 2
acts to give longer
time for sum-
moning juries,
than by law re-
quired.

Provided always, that this act, nor the act of 7 & 8 *W. 3.* shall not extend to give or require any longer time for the summoning of any juries that are to try any issues joined in any of the said courts, that are tryable by jurors of the city of *London*,

London, or county of *Middlesex*, than was by law required before the making of the said act; nor shall extend or be construed to give any longer time, or other day for the return of any writ, precept or process of *venire facias*, *habeas corpora* or *disfringas*, for the summoning, attaching or distraining of any jury to appear, than was by law required before the making the said act: but that where there shall not be *six days* between the awarding of such writ, precept or process, and return thereof, every juror may be summoned, attached or distrained to appear at the day and time therein mentioned or appointed, as he might have been before the making of the said act; any thing herein or therein contained to the contrary in any wise notwithstanding. *f. 11.*

Nor for return of writs, &c.

Every juror to appear at the time appointed.

Provided, that this act, shall not extend to the city of *London*, nor to any other county of any city or town within this realm, nor to any town corporate that have power by charter to hold sessions of gaol delivery, or sessions of the peace for such town. *f. 12.*

Cities &c. excepted.

By stat. 1 *Ann* stat. 2. c. 13. *f. 3.* it is enacted, that no person interested in such estate, as will qualify him to serve on juries, of the clear yearly value of 150*l.* or of any greater yearly value, shall be returned and summoned to serve upon any jury, at any sessions of the peace holden for any part of the county of *York*, upon the penalty of 20*l.* to be forfeited by any sheriff, under-sheriff, &c. making such return, to be recovered to and for the use of any person that will sue for the same, in any of the courts of record at *Westminster*, by action of debt, &c.

Persons having 150*l.* per annum in *Yorkshire* not to serve at the sessions.

By 3 & 4 *Ann* c. 18. *f. 3.* it is enacted, that if any sheriff of the said county of *York*, refuse or neglect to provide and keep such book or register, as in the 7 & 8 *W.* 3. is directed, or shall refuse or neglect to enter therein the names of the persons who served as jurors in any of the assizes or general quarter sessions of the peace, to be held in or for the

Penalty on the sheriff of *York* not keeping a book of jurors names.

the said county, or any of the ridings therein, in or during the time he shall be sheriff of the said county, with the additions and places of abode, and time and places of such their services, in such manner as in and by the said recited act is directed; or shall refuse or neglect, within 10 days after the next succeeding sheriff of the said county shall be sworn into his office, to deliver over to such succeeding sheriff, as well all and every the books and registers that shall be made or prepared in the year, wherein he shall have served sheriff, as also all such other books or registers as were prepared in the sheriffwick of any of his predecessors, sheriffs of the said county, within 4 years then next before, and which were delivered over to him by any of his said predecessors, or shall refuse or neglect to make and deliver, by himself, or his under-sheriff, such certificate *gratis*, as in the said recited act is mentioned, that then every such sheriff of the said county of *York*, so refusing or neglecting in all or any of the cases aforesaid, shall for every such offence forfeit the sum of one hundred pounds; one moiety to her majesty, and the other to such person or persons as shall sue in any court of record at *Westminster*, by action of debt, &c.

Or returning one
person oftner
than once in 4
years.

That if any such sheriff of the said county, for the time being, his under-sheriff, &c. shall knowingly summon or return any person or persons to serve on any jury or juries, at any the said assizes or sessions of the peace, who shall within four years before such summons or return, have served on any jury at any the said assizes or sessions held within the said county, or any the ridings therein, and shall not, upon producing of such certificate or certificates, as aforesaid, to the officer or person so summoning, or to the said sheriff, &c. discharge the said summons or return, and thereof give notice to the party summoned, six days before such assizes or sessions of the peace, at the which such person shall be summoned or returned to appear, that then the said sheriff, &c. summoning or re-
fusing

fusing to discharge, as aforesaid, shall forfeit to the party summoned 20*l.* to be recovered with full costs of suit. *f.* 4.

This act is continued by 10 *Ann* c. 14. with 7 *W.* 3. c. 32. And by stat. 10 *Ann* c. 14. *f.* 5. The statute of *W.* 3. c. 32, shall be construed to extend, not only to any sessions of the peace to be holden for any of the ridings within the county of *York*, but to any sessions that shall be holden by adjournment, and he shall not be thereby exempted from serving at the assizes for the county of *York*.

By stat. 3 *Geo.* 2. c. 25. *f.* 1. it is enacted that from and after the first of September, 1730, the person or persons required by a statute in 7 & 8 *W.* 3. (intituled, *an act for the ease of jurors, and better regulating of juries*) and by a clause in another act, made in the 3d. and 4th years of the reign of the late queen *Anne* (intituled, *an act for making perpetual an act for the more easy recovery of small tithes; and also an act for the more easy obtaining partition of lands in coparcenary, joint tenancy, and tenancy in common; and also for making more effectual and amending several acts relating to the return of jurors*) to give in, or who are by virtue of this act to make up true lists in writing of the names of persons qualified to serve on juries, in order to assist them to complete such lists, pursuant to the intent of the said act, shall (upon request by him or them made to any parish officer or officers, who shall have in his or their custody any of the rates for the poor or land tax in such parish or place) have free liberty to inspect such rates, and take from thence the name or names of such freeholders, copyholders, or other persons qualified to serve on juries, dwelling within their respective parishes or precincts, for which such list is to be given in and returned, pursuant to the said acts; and shall yearly and every year, 20. days at least before the feast of *Saint Michael* the archangel, upon two or more *Sundays*, fix upon the door of the church, chapel, and every other public place of religious worship within

Lists to be made from the parish rates and fixed on the church doors.

And 3 & 4 *Ann.*

To be made from the rates in each parish.

And yearly fixed upon church doors.

Persons not qualified may be relieved at the quarter sessions.

within their respective precincts, a true and exact list of all such persons intended to be returned to the quarter sessions of the peace, as qualified to serve on juries, pursuant to the directions of the said act, and leave at the same time a duplicate of such list with a church-warden, chapel-warden, or overseer of the poor of the said parish or place, to be perused by the parishioners without fee or reward, to the end that notice may be given of persons so qualified, who are omitted, or of persons inserted by mistake, who ought to be omitted out of such lists; and if any person or persons, not being qualified to serve on juries, shall find his or their name or names mentioned in such list, and the person or persons required to make such list shall refuse to omit him or them, or think it doubtful whether he or they ought to be omitted, it shall and may be lawful to and for the justices of the peace for the county, riding, or division, at their respective general quarter sessions, to which the said lists shall be so returned, upon satisfaction from the oath of the party complaining, or other proof, that he is not qualified to serve on juries, to order his or their name or names to be struck out, or omitted in such list, when the same shall be entered in the book to be kept by the clerk of the peace for that purpose, pursuant to the said act.

Wilfully omitting, or inserting wrong persons, forfeits 10s.

That if any person or persons, required by the said acts to return or give in, or by virtue of this act to make up any such list, or concerned therein, shall wilfully omit, out of any such list, any person or persons, whose name or names ought to be inserted, or shall wilfully insert any person or persons, who ought to be omitted, or shall take any money, or other reward for omitting or inserting any person whatsoever, he or they so offending, shall, for every person so omitted or inserted in such list, contrary to the meaning of this act, forfeit 20s. for every such offence, upon conviction before one or more justices, where such offender shall dwell, upon the confession of the offender

offender, or proof by one or more credible witnesses or witnesses on oath, one half thereof to the informer, the other to the poor of such parish or place, for which the said list is returned; and in case such penalty shall not be paid within five days after such conviction, the same shall be levied by distress and sale of the offender's goods, by warrant or warrants from one or more justice or justices of the peace, returning the overplus, if any there be; and the said justice or justices, before whom such person shall be convicted of such offence, shall, in writing under their hands, certify the same to the justices at their next general quarter sessions, which shall be held for the county, in which the person or persons so omitted or inserted shall dwell, which justices shall direct the clerk of the peace for the time being, to insert or strike out the name or names of such person or persons, as shall by such certificate appear to have been omitted or inserted in such lists, contrary to the meaning of this act; and duplicates of the said lists, when delivered in at the quarter sessions of the peace, and entered in such book, to be kept by the clerk of the peace for that purpose, shall, during the continuance of such quarter sessions, or within ten days after, be delivered or transmitted by the clerk of the peace to the sheriff of each respective county, or his under-sheriff, in order for his returning of juries out of the said lists; and such sheriff or under-sheriff, shall immediately take care, that the names of the persons contained in such duplicates shall be faithfully entered alphabetically, with their additions and places of abode, in some book or books to be kept by him or them for that purpose; and that every clerk of the peace neglecting his duty therein, shall forfeit 20*l.* to such person or persons as shall inform or prosecute for the same, until the party be thereof convicted upon an indictment before the justices of the peace, at any general quarter

Duplicates of the lists to be transmitted to the sheriff.

Sheriff, &c. returning any person whose name is not in the duplicate,

or clerk of assize recording appearances, when the party did not appear, to be fined.

sessions of the peace to be holden for the same county, riding, division, or precinct. *f. 2.*

That in case any sheriff, &c. to whom the return of juries shall belong, shall summon and return any persons to serve on any jury, in any cause to be tried before the justices of assize, or *nisi prius*, or judges of the said great sessions, or the judge or judges of the sessions for the said counties palatine, whose name is not inserted in the duplicates so delivered or transmitted to him or them by such clerk of the peace, if any such duplicate shall be delivered or transmitted, or if any clerk of assize, judge's associate, or other officer, shall record the appearance of any person so summoned and returned as aforesaid, who did not really and truly appear; then, and in such case, any judge or justice of assize, or *nisi prius*, or judge or judges of the said great sessions, or the judge or judges of the sessions for the said counties palatine, shall, and may, upon examination, in a summary way, set such fine or fines upon such sheriff, or undersheriff, clerk of the assize, judge's associate, or other officer, for every such person so summoned and returned as aforesaid, and for every person, whose appearance shall be so falsely recorded, as the said judge or justice of assize, *nisi prius*, or of the said great sessions, or the judge or judges of the sessions for the said counties palatine, shall think meet, not exceeding 10*l.* and not less than 40*s.* *f. 3.*

Justices of assize, &c. may fine sheriff, &c. for returning jurors irregularly.

Shall not extend to Middlesex.

4 Geo. 2. c. 7. *f. 1.*

That no persons shall be returned as jurors to serve on trials at any assizes, or *nisi prius*, or at the said great sessions, or at the sessions for the said counties palatine, who have served within the space of *one year* before in the county of *Rutland*, of *four years* in the county of *York*, or of two years before in any other county, not being a county of a city or town; and if any such sheriff shall wilfully transgress therein, any judge or justice of assize, or *nisi prius*, or of the said great sessions, or the judge or judges of the sessions for the said coun-

ties

ties palatine, may, and is hereby required on examination and proof of such offence, in a summary way, to set a fine or fines upon every such offender, as he shall think meet, not exceeding 5*l.* for any one offence. *s.* 4.

That the sheriff, under-sheriff, or other officer, to whom the return of juries shall belong, shall, from time to time, enter, or register in a book to be kept for that purpose, the names of such persons as shall be summoned, and shall serve as jurors on trials at any assizes, or *nisi prius*, or in the said courts of great sessions, or sessions for the said counties palatine, together with their additions and places of abode alphabetically, and also the times of their services; and every person so summoned and attending, or serving as aforesaid, shall, (upon application by him made to such sheriff, under-sheriff, or other officer,) have a certificate, testifying such his attendance or service done; which certificate, the said sheriff, under-sheriff, or other officer, is hereby directed and required to give without fee or reward; and the said book shall be transmitted by such sheriff, under-sheriff, or other officer, to his or their successor or successors, from time to time. *s.* 5.

Sheriff, &c. to enter the names of those who have served;

and give certificates.

That no sheriff, &c. shall directly or indirectly, take or receive any money, or other reward, to excuse any person from serving, or being summoned to serve on juries, or under that colour or pretence, and that no bailiff or other officer appointed by any sheriff or under-sheriff to summon juries, shall summon any person to serve thereon, other than such, whose name is specified in a mandate signed by such sheriff or under-sheriff, and directed to such bailiff or other officer; and if any sheriff, under-sheriff, bailiff, or other officer, shall willfully transgress in any the cases aforesaid, any judge, or justice of assize, *nisi prius*, or great sessions aforesaid, or the judge or judges of the sessions for the said counties palatine, may, and is hereby required on examination and proof of such offence,

No money to be taken to excuse persons from serving.

Penalty.

in a summary way, to set a fine or fines upon any person or persons so offending, as he shall think meet, not exceeding 10*l.* according to the nature of the offence. *f. 6.*

Constables, &c.
to subscribe their
lists before jus-
tices, on oath,
&c.

That after the said first day of *September*, 1730, it shall be lawful and sufficient for all or any constables, tythingmen, or head-boroughs, after they shall have made and compleated such lists of persons qualified to serve on juries for their respective parishes or precincts, according to the manner directed by the before-mentioned acts, and this present act, to subscribe the same in the presence of one or more justice or justices of the peace for each respective county or place; and also at the same time, to attest the truth of such lists upon oath to the best of their knowledge or belief; which oath, such justice or justices respectively, are hereby impowered and required to administer; and the said lists shall (being first signed by the said justices respectively, before whom the same shall be attested on oath, and subscribed as aforesaid) be delivered by the said constables, tythingmen, or head-boroughs, to the chief or high constables of the hundreds or divisions whereunto the same shall respectively belong, who are hereby directed and required to deliver in such lists to the justices of the peace for the county, riding, or division, at their respective general quarter sessions in open court, attesting at the same time upon oath, their receipt of such lists from the constables, tythingmen, or head-boroughs respectively, and that no alteration hath been therein made since their receipt thereof; and the said lists, so delivered in and attested, shall be deemed as effectual, as if they had been delivered in by the constables, tythingmen, or head-boroughs, for their respective parishes or precincts. *f. 7.*

Sheriff, &c. on
return of writs
of *venire facias*
to annex a panel
of jurors, &c.

That from and after the 25th of *December*, 1730, every sheriff, or other officer, to whom the return of the *venire facias juratores*, or other process for the trial of causes before justices of assize, or *nisi prius*,

prius, in any county in *England*, doth, or shall belong, shall, upon his return of every such writ of *venire facias* (unless in causes intended to be tried at bar, or in cases where a special jury shall be struck by order or rule of court) annex a panel to the said writ, containing the christian and surnames, additions, and places of abode, of a competent number of jurors, named in such lists as qualified to serve on juries, the names of the same persons to be inserted in the panel annexed to every *venire facias*, for the trial of all issues at the same assizes in each respective county; which number of jurors shall be not less than forty eight in any county, nor more than seventy two, without direction of the judges appointed to go the circuit, and sit as judges of assize, or *nisi prius*, in such county, or one of them, who are respectively hereby impowered and required, if he or they see cause, by order under his or their respective hand or hands, to direct a greater or lesser number, and then such number as shall be so directed, shall be the number to serve on such jury; and that the writs of *habeas corpora juratorum*, or *distringas*, subsequent to such writ of *venire facias juratores*, need not have inserted in the bodies of such respective writs, the names of all the persons contained in such panel; but it shall be sufficient to insert in the mandatory part of such writs respectively, *corpora separatim personarum in pannello huic brevi annexo nominatarum*, or words of the like import, and to annex in such writs respectively panels, containing the same names, as were returned in the panel to such *venire facias*, with their additions and places of abode, that the parties concerned in any such trials, may have timely notice of the jurors, who are to serve at the next assizes, in order to make their challenges to them, if there be cause; and that for the making the returns and panels aforesaid, and annexing the same to the respective writs, no other fee or fees shall be taken, than what are now allowed by law to be taken, for

the return of the like writs and panels annexed to the same; and that the persons named in such panels shall be summoned to serve on juries at the then next assizes or sessions of *nisi prius*, for the respective counties to be named in such writs, and no other. *f. 8.*

Return of jurors
in Wales,

That every sheriff, or other officer, to whom the return of juries for the trial of causes in the court of grand sessions in any county of *Wales*, do, or shall belong, shall, at least eight days before every grand sessions, summon a competent number of persons qualified to serve on juries, out of every hundred and commote within every such county, so as such number be not less than ten, or more than fifteen, without the directions of the judge or judges of the grand sessions held for such county, who is, and are hereby impowered, if he or they shall see cause, by rule or order of court, to direct a greater or lesser number to be summoned out of every such hundred and commote respectively; and that the said officer and officers, who shall summon such persons, shall return a list containing the christian and surnames, additions, and places of abode, of the persons so summoned to serve on juries, the first court of the second day of every grand sessions; and that the persons so summoned, or a competent number of them, as the judge or judges of such grand sessions shall direct, and no other, shall be named in every panel to be annexed to every writ of *venire facias juratores*, *habeas corpora juratorum*, and *distringas*, that shall be issued out and returnable for the trial of causes in such grand sessions. *f. 9.*

and counties pa-
latine of Chester,
Lancaster, and
Durham.

That every sheriff, or other officer, to whom the return of the *venire facias juratores*, or other process for the trial of causes before the justices of the courts or sessions to be held for the counties palatine of *Chester*, *Lancaster*, or *Durham*, doth belong, shall, fourteen days at the least, before the said courts or sessions shall respectively be held, summon a competent number of persons qualified to

to serve on juries, so as such number be not less than forty eight, nor more than seventy two, without the direction of the judge or judges of the courts or sessions to be held for such counties palatine respectively, and shall, eight days at the least, before such courts or sessions shall respectively be held, make, or cause a list to be made, of the persons so summoned to serve on juries, containing their christian and surnames, additions, and places of abode; and the list so made shall forthwith be publicly hung up in the sheriff's office, to be inspected and read by any person or persons whatsoever; and that the persons named in such list, and no other, shall be summoned to serve on juries at the next courts or sessions to be held for the said respective counties palatine; and the said sheriff, or other officer, is hereby required to return such list on the first day of the court or sessions to be held for the said counties palatine respectively; and the persons so summoned, or a competent number of them, as the judge or judges of such courts or sessions respectively shall direct, and no other, shall be named in every panel, to be annexed to every writ of *venire facias juratores*, *habeas corpora juratorum*, and *distringas*, that shall be issued out, and returnable for the trial of causes in such courts or sessions respectively. *j. 10.*

That the name of each and every person, who shall be summoned and impanelled as aforesaid, with his addition, and the place of his abode, shall be written in several and distinct pieces of parchment, or paper, being all, as near as may be, of equal size and bigness, and shall be delivered unto the marshal of such judge of assize, or *nisi prius*, or of the said great sessions, or of the sessions for the said counties palatine, who is to try the causes in the said county, by the under-sheriff of the said county, or some agent of his. *j. 11.*

That every person or persons, whose name or names shall be drawn as a juror and who shall not appear after being openly called three times, upon

Names of persons impanelled to be written, and delivered to the marshal of the assize, and put in a box to be drawn, &c.

Penalty on defaulters.

oath made by some credible person that such person so making default had been lawfully summoned, shall forfeit and pay for every default in not appearing upon call, as aforesaid (unless some reasonable cause of his absence be proved by oath or affidavit, to the satisfaction of the judge, who sits to try the said cause) such fine or fines not exceeding the sum of five pounds, and not less than forty shillings, as the said judge shall think reasonable to inflict or assess, for such default. *f. 13.*

Method in case
of view.

Provided always, that where a view shall be allowed in any cause, that in such case six of the jurors named in such panel, or more, who shall be mutually consented to by the parties or their agents on both sides, or if they cannot agree, shall be named by the proper officer of the respective courts of King's Bench, Common Pleas, Exchequer, at *Westminster*, or the Grand Session in *Wales*, and the said counties palatine, for the causes in their respective courts, or if need be, by a judge of the respective courts where the cause is depending, or by the judge or judges, before whom the cause shall be brought on to trial respectively, shall have the view, and shall be first sworn, or such of them, as appear upon the jury to try the said cause, before any drawing, as aforesaid, and so many only shall be drawn to be added to the viewers who appear, as shall, after all defaulters and challenges allowed, make up the number of twelve to be sworn for the trial of such cause. *f. 14.*

When special
juries in cities
are appointed,
the jury to be
taken out of lists
of persons quali-
fied.

Provided always, that where any special jury shall be ordered by rule of any of the said courts to be struck by the proper officer of such court, in the manner aforesaid, in any cause arising in any city, or county of a city or town, the sheriff or sheriffs, or under-sheriff of such city, or county of a city or town, shall be ordered by such rule to bring, or cause to be brought before the said officer, the books or lists of persons qualified to serve on juries within the same, out of which juries ought to be returned by such sheriff or sheriffs, in like manner,

as the freeholders book hath been usually ordered to be brought, in order to the striking of juries for trials at the bar, in causes arising in counties at large; and in every such case the jury shall be taken and struck out of such books or lists respectively. *f. 17.*

That any person or persons, having an estate in possession in land, in their own right, of the yearly value of 20*l.* or upwards, over and above the reserved rent payable thereout, such lands being held by lease or leases for the absolute term of 500 years or more, or for 99 years, or any other term, determinable on one or more life or lives, the names of every such person or persons, shall and may, and are hereby directed and required to be inserted in the respective lists, as aforesaid, in order to their being inserted in the freeholders book; and the persons appointed to make such lists are hereby directed to insert them accordingly; and such leaseholder or leaseholders, shall and may be summoned or impanelled to serve on juries, in like manner as freeholders may. *f. 18.*

Who are qualified to be inserted in the lists.

That the sheriffs of the city of *London*, for the time being, shall not impanel or return any person or persons to try any issue joined in any of his majesty's courts of King's Bench, Common Pleas, and Exchequer, or to be or serve on any jury at the sessions of *oyer and terminer*, gaol delivery, or sessions of the peace, to be had or held for the said city of *London*, who shall not be an householder within the said city, and have lands, tenements, or personal estate, to the value of 100*l.* and the same matter and cause alledged by way of challenge, and so found, shall be taken and admitted as a principal challenge, and the person or persons so challenged, shall and may be examined on oath of the truth of the said matter. *f. 19.*

Or to serve in London.

That the sheriffs, or other officers, to whom the returning of juries doth or shall belong, for any county, city, or place respectively, shall not impanel or return any person or persons to serve on any jury

Return of juries in capital cases.

jury for the trial of any capital offence, who, at the time of such return, would not be qualified in such respective county, city, or place, to serve as jurors in civil causes for that purpose; and the same matter and cause alleged by way of challenge, and so found, shall be admitted and taken as a principal challenge, and the person or persons so challenged, shall and may be examined on oath of the truth of the said matter. *f. 20.*

This act is made perpetual by 6 *Geo. 2. c. 37.*

None to be returned, who has been returned in the two terms preceding.

By stat. 4 *Geo. 2. c. 7. f. 2.* it is enacted, That no person shall be returned to serve as a juror at any session of *nisi prius*, in the county of *Middlesex*, who has been returned to serve as a juror at any such session of *nisi prius* in the said county, in the two terms or vacations next immediately preceding, under such penalty upon the sheriff, under-sheriff, bailiff, or other officer employed or concerned in the summoning or returning of jurors in the said county of *Middlesex*, as might have been inflicted upon them, or any of them, for any offence against the said recited clause. *f. 2.*

Leaseholders, where the improved rents amount to 50*l.* per annum, liable to serve on juries.

That all leaseholders upon leases, where the improved rents or value shall amount to 50*l.* or upwards, *per annum*, over and-above all ground-rents, or other reservations, payable by virtue of the said leases, shall be liable and obliged to serve upon juries, when they shall be legally summoned for that purpose.

In what manner justices of session or assize for Chester, Lancaster, and Durham may appoint special juries.

By stat. 6 *Geo. 2. c. 18. sect. 1.* it is enacted, that the justices of the session or assizes for the counties palatine of *Chester*, *Lancaster*, and *Durham*, upon motion made on behalf of his majesty, his heirs, or successors, or on motion of any prosecutor or defendant in any indictment or information for any misdemeanor, or on the motion of any plaintiff or plaintiffs, defendant or defendants, in any action, cause, or suit whatsoever, depending, or to be brought and carried on in the courts of session or assize of the said counties palatine of *Chester*, *Lancaster* and *Durham*, or in any of them, shall,

shall and may, in case such justices in their discretion shall think fit, order and appoint a jury to be struck before the proper officer of each court respectively, for the trial of any issue joined in any of the said cases, in such manner as special juries have been usually struck in the courts of law at *Westminster*, upon trials at bar had in the said courts, which jury, so struck as aforesaid, shall be the jury returned for the trial of such issue, as aforesaid.

Penalty of 40 s. on every jurymen who does not appear after summoned in *London* or any other city or town corporate, liberties or franchises in *England*, for each default nor not less than 20 s. 29 *Geo. 2. c. 19. s. 1.*

Penalty of jurors who do not appear.

By stat. 24 *Geo. 2. c. 7.* it is enacted, that no person who shall, after the said first day of *Easter* term, serve upon any jury appointed or returned by authority of any of the said acts, shall be allowed or take for serving on any such jury more than the sum of money which the judge who tries the issue or issues shall think just and reasonable, not exceeding the sum of 1 l. 1 s. except in causes wherein a view hath been or shall be directed. *s. 2.*

Fees allowed to jurymen.

That from and after the said first day of *Easter* term, every *venire facias* for the trial of any issue, in any action or information upon any penal statute, in any of his majesty's courts of record at *Westminster*, in the counties palatine of *Lancaster*, *Chester*, and *Durham*, and the principality of *Wales*, shall be awarded of the body of the proper county where such issue is triable; any thing in the said act to the contrary notwithstanding. *s. 3.*

Venire facias for the trial of any issue upon a penal statute, to be awarded of the body of the county where the issue is triable.

That from and after the said first day of *Easter* term, no challenge shall be taken to any panel of jurors, for want of a knight's being returned in such panel, nor any array quashed by reason of any such challenge taken after that time; any law, usage, or custom, to the contrary notwithstanding. *s. 4.*

No challenge to be taken to any panel of jurors, for want of a knight's being returned thereon, &c.

Sessions.

Sessions.

Sessions, what.

THE sessions of the peace is a court of record, holden before two or more justices, whereof one is of the quorum, for execution of the authority given them by the commission of the peace, and certain statutes and acts of parliament, *Dalt. 5.*

Difference between general, quarter, and special sessions.

It seems that the *general* sessions, and *quarter*-sessions are not synonymous; but that the *quarter*-sessions are a species only of the *general* sessions, and that such sessions only are properly called *general* quarter-sessions, which are holden in the *four* quarters of the year, in pursuance of the statute of the 2 *H. 5.* and that any other sessions, holden at any other time for the general execution of the justices authority, which by the said statute they are authorised to hold oftner than at the times therein specified, if need be, may be properly called *general* sessions, and that those holden on a special occasion for the execution of some particular branch of their authority, may properly be called *special* sessions. 2 *Haw. 42.*

At what time the sessions shall be kept.

By the 12 *R. 2. c. 10.* The justices shall keep their session in every *quarter* of the *year* at least, and by *three* days, if need be; on pain of being punished according to the discretion of the king's council, at the suit of every man that will complain.

When quarter-sessions to be held.

And by the 2 *H. 5. ff. 1, c. 4.* the particular time in every quarter of the year shall be as follows; to wit, in the *first* week after the feast of *St. Michael*, in the *first* week after the *Epiphany*, in the *first* week after the close of *Easter*, and in the *first* week after the translation of *St. Thomas* the Martyr; and more often if need be.

Except in Middlesex.

Except in *Middlesex*; where the justices shall keep their sessions *twice* in the *year* at least; and more

more often (if need be) for any riot or forcible entry. 14 H. 6. c. 4.

The strict, regular exposition of the abovesaid Exposition of 2 H. 5. statute of the 2 H. 5. is, that if the *feast day* fall of the *Sunday*, the sessions shall be held *the week following*, and not the *same week*. 2 H. H. 49.

Yet it is very plain, that the quarter sessions are variously held in several counties, some at one day and some at another; yet it hath been ruled, that these are each of them good *quarter-sessions* within the several acts that relate to quarter-sessions; for these acts, especially the 2 H. 5. is only *directory* and in the *affirmative*, and therefore, though the sessions are held on another day, according to the general direction of the 12 R. 2. yet they are *quarter-sessions*. 2 H. H. 50. Quarterly sessions are variously held in several counties.

Westmoreland, J. P. and K. P. esquires, justices of our sovereign lord the king, assigned to keep the peace in the county of *aforesaid*, and also to hear and determine divers felonies, trespasses, and other misdemeanors committed in the said county, and one of us of the quorum; to the sheriff of the same county, greeting: on the behalf of our said sovereign lord the king, we command you, that you omit not, by reason of any liberty in your county, but that you enter therein, and that you cause to come before us, or others, justices assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses and other misdemeanors in the said county committed, on *the* day of *now next ensuing*, at the hour of ten in the forenoon of the same day at in the said county 24 good and lawful men of the body of the county *aforesaid*, then and there to inquire, present, do and perform, all and singular such things, which on the behalf of our said sovereign lord the king shall be enjoined them; also that you make known to all coroners, keepers of gaols, and houses of correction, high constables, and bailiffs of liberties, within the county *aforesaid*, that they be then there to do and fulfil those things which by reason of their offices shall be to be done: moreover, that you cause to be proclaimed through

Precept to summon the sessions from the justices to the sheriff.

through the said county in proper places the aforesaid sessions of the peace to be held at the day and place aforesaid; and do you be then there, to do and execute those things which belong to your office: and have you then there as well the names of the jurors, coroners, keepers of gaols, and houses of correction, high constables, and bailiffs aforesaid, as also this precept. Given under our seals at A. in the county aforesaid, the day of in the year of the reign of, &c. (Lamb. 381.)

The sheriff's return.

The execution of this precept appears in certain pannels hereto annexed. I further certify that I have given notice to all coroners, keepers of gaols and houses of correction, high constables, and bailiffs of liberties within my county, to be and appear at the time and place within mentioned, to do and perform, &c. and have caused to be proclaimed thro' my county, in proper places the sessions within mentioned. The answer of.

Then on a piece of parchment write the names of the jurors to enquire for our lord the king, &c. thus:

The names of the jurors to inquire.

The names of the jurors to try.

Coroners, keepers of gaols, &c.

Sheriff to provide a decent place to hold the session.

And convey such offenders to the gaol.

Ought also to attend, and for why.

The sheriff is to provide and make ready a fit, meet, and decent place; for the justices of the peace to keep and hold their general quarter-sessions as need shall require. And the sheriff is to convey such offenders to the gaol, at the appointment of the justices of the peace. He or his under-sheriff ought also to attend the justices at their general sessions of the peace to return the precept directed to him, and to take the charge of prisoners and to serve the court otherwise as he hath in charge by the *mandamus* that is mentioned in the commission of the peace; the other, because the sheriff hath also care and charge of the peace, and so is there to object against such persons as shall be committed by him.

The

The sheriff upon receipt of the precept of any two justices (one to be of the *quorum*) is to summon the session of the peace, and to return a grand jury of 24 men before them or their fellow justices, at a certain day and place appointed, but such precept ought to bear *teste fifteen days* before the return, and ought to be forthwith delivered to the sheriff, that he may have sufficient time to proclaim the sessions, and to give notice to all stewards, constables, and bailiffs of liberties, coroners and other officers, to be present and to do their duties at such day and place, and to proclaim in proper places throughout his bailiwick, that such sessions will be holden at such day and place, and to attend there himself to do his duty. 2 *Haw.* 41.

Upon receipt of precept to summon quarter sessions how to act.

When the sheriff hath received the precept from the clerk of the peace, he must direct several warrants to the several bailiffs of hundreds, rapes, and liberties, containing in them, the substance of the said precept, to summon them to appear at the sessions, &c.

To grant precepts for summoning sessions,

Oxon } *J. P.* Esq. sheriff of the county aforesaid,
to wit: } to *A. B.* and *C. D.* my bailiffs, of the
hundred of *G.* greeting : by virtue of his majesty's writ to me directed ; these are in his majesty's name to will and require you, that you forthwith make known, by open proclamation, in every market town, and all other places convenient, within your said hundred, that the next general and quarter sessions of the peace, of and for the county aforesaid, is to be holden and kept at *Oxford* in the county aforesaid, on *Wednesday*, being the day of next coming, by eight o'clock in the forenoon of the same day ; and that you give notice to all justices of the peace, coroners, stewards, gaolers and chief constables of your hundred, that they be then and there present, to do and perform that which to their several offices doth appertain : and that all those that ought to prosecute any prisoner or prisoners, in the gaol of the said county, or bound over then to appear and answer, be then
and

Warrant to summon.

and there present, to prosecute against them according to law: and also, that you summon and warn the persons whose names are underwritten, that they be then and there present to serve on the grand jury, and to enquire, on his majesty's behalf, for the body of the county aforesaid; of all such matters and things as shall be then and there given them in charge: and also, that you summon and warn the persons underwritten, being able and sufficient freeholders of your hundred, that they be then and there present to serve on the petty jury, for his majesty's service; and that you yourself be then and there present to make return hereof. And herein neither you nor them may fail, and at you and their perils. Given under the seal of my office, the day of and in the 26th year of the reign of our sovereign lord *George* the third, by the grace of God, of *Great Britain, France and Ireland*, king, defender of the faith, and in the year of our lord 1786.

Grand jury.

*A. B. }
C. D. }*

name them.

Petty jury.

*E. F.
G. H.*

If there are persons to be called on recognizances then how to add to the process.

If there are any persons to be called on their recognizances, &c. then if the precept commands the sheriff to summon or distrain, &c. add this;
 “ I also command you to summon *C. D.* of, &c.
 “ and to distrain the inhabitants of the hundred of
 “ *C.* so that they be and appear before the justices
 “ aforesaid, at the time and place aforesaid, and
 “ also that you take *E. F.* of, &c. *J. K.* of, &c.
 “ so that I may have their bodies before the said
 “ justices at the time and place aforesaid, to answer to our said lord the king, of and concerning divers trespasses and other misdemeanors whereof they stand indicted. Hereof fail not, as you will answer at your peril. Given under my hand and seal of office.” &c.

By the same sheriff.

Circuit.

Circuit.

THE courts of assize, and *nisi prius*, are composed of two or more commissioners, who are twice in every year sent by the king's special commission, all round the kingdom, (except *London* and *Middlesex*,) to try by a jury of the respective counties, the truth of such matters of fact as are then under dispute in the courts of *Westminster-hall*. They came into use in the room of the antient justices in eyre, who made their circuit once in seven years, for the purpose of trying causes. *Co. Litt.* 293. *See Mag. Cart.* 12.

Courts of assize, and *nisi prius*, to be composed of two or more commissioners.

When came into use.

The present justices of assize, and *nisi prius*, are derived from the statute of *Westm.* 2. 13 *Ed.* 1. c. 30. 14 *Ed.* 3. r. 16. and must be two of the king's justices, of the one bench or the other; or the chief baron of the exchequer, or the king's serjeants sworn; and usually make their circuits after *Hilary* and *Trinity* terms. 3 *Ed.* 1. c. 51.

The present justices.

No man shall be judge of assize in his own country. 4 *Ed.* 3. c. 2. 8 *Ric.* 2. c. 2. 33 *Hen.* 8. c. 24.

The judges sit by virtue of five several authorities. 1. *The commission of the peace.* 2. *A commission of oyer and terminer.* 3. *A commission of general gaol delivery.* 4. *A commission of assize*, directed to the judges and clerk of assize, to take the assizes; that is, to take the verdict of a peculiar species of jury called an assize; and summoned for the trial of landed disputes. 5. That of *nisi prius*, which is a consequence of the commission of assize being annexed to the office of those justices by the *stat. of Westm.* 2. 13 *Ed.* 1. c. 30. and it impowers them to try all questions of fact issuing out of the courts at *Westminster*, that are then ripe for trial by jury. The original of the name is this; all causes commenced in the courts of *Westminster-hall*, are by the course of the courts appointed to be there

tried, on a day fixed in some *Easter* or *Michaelmas* term, by a jury returned from the county wherein the cause of action arises; but with this proviso, *nisi prius justiciarii ad assisas capiendas venerint*; unless before the day prefixed, the judges of assize come into the county in question. This they are sure to do in the vacations preceding *Easter* and *Michaelmas* terms, and there dispose of the cause, which saves much expence and trouble, both to the parties, the jury, and the witnesses.

The several counties in *England*, are divided in six circuits, viz.

Circuits.

The *Midland*, containing the counties of
Northampton, *Derby,*
Rutland, *Leicester,*
Lincoln, *Warwick.*
Nottingham,

Norfolk.

Bucks, *Cambridge,*
Bedford, *Norfolk,*
Huntingdon, *Suffolk.*

Home.

Hertford, *Sussex,*
Essex,
Kent, *Surry.*

Oxford.

Berks, *Gloucester,*
Oxford, *Monmouth,*
Hereford, *Stafford,*
Salop, *Worcester.*

Western.

Southampton, *Cornwall,*
Wilts, *Devon,*
Dorset, *Somerset.*

Northern.

York, *Cumberland,*
Durham, *Westmoreland,*
Northumberland, *Lancashire.*

Sheriff's Duty on the Circuit.

BEFORE the justices of assize go their circuit, they issue out their precept directed to the sheriff, to cause the assizes to be summoned, and the persons who are obliged to attend thereon, to appear before them, in consequence of which, he issues out his warrant directed to his bailiffs, and also to the bailiffs of liberties, within his county, to summon the same, and the persons therein named, and to proclaim within every hundred, the day and place the assizes are to be held; which warrant is to contain the substance of the judges precept, and the sheriff must cause this to be done six days at the least before the assize day. *Stat. 42 Ed. 3. c. 11. 6 H. 6. c. 2.*

He is also to cause twenty four good and lawful men of the county, some out of every hundred, and which are called the grand inquest, who are gentlemen of the first figure in the county, and freeholders, but to what amount is uncertain; to attend there to do and execute all those things, which on the part of our lord the king shall be commanded them.

Also twenty four good and lawful men who have lands and tenements in freehold, to the value of 10*l.* *per annum*, who are called the petit jury, and are to try prisoners upon the indictments found by the grand inquest. *Stat. 5 Geo. 2. c. 25.*

To give notice to all justices of peace, coroners, mayors, stewards, bailiffs of liberties, to be there with their rolls, records, &c. To prosecutors to come and prosecute any prisoner in prison, and also to all gaolers, to convey unto the said assize town, all prisoners committed to their charge or custody, there to receive their trials, judgment, and punishments for the same; and for them to certify the names of all the prisoners which are in their custody for felony, &c. and by whom committed, and for

what cause, what prisoners have been bailed (by the justices of the peace) after they were committed: And also to certify the several rapes and hundreds within the county, with the names of their constables, and that they severally attend in person upon the justices of assize and gaol delivery; and execute their commands in matters concerning the execution of their offices.

And that the said bailiffs summon a jury between party and party, for the trial of their cause at *nisi prius*.

After the bailiffs have executed their warrants, they are to return the same to the sheriff, in order for him to return the judge's precept, to which he annexes a calendar as follows, wrote on a piece of parchment.

Names of the
justices, &c.

Oxfordshire } A calendar of the names of all the
to wit. } justices of peace of our lord the
king, coroners, mayors, bailiffs, liberties, rapes,
and hundreds, within the county of *Oxford*, sum-
moned to be and appear before his majesty's justices
assigned to take the assizes in and for the said
county, on *Wednesday* the — day of *July*, at *Ox-*
ford, in the said county, and in the year of our
Lord 1786.

Names of the justices, coroners, mayors, bailiffs,
&c.

A. B. Esq. C. D. Esq. E. H. G. H.

Then on a separate piece of paper, put the names of the grand jury until they be sworn, and when they are sworn, ingross them on parchment, and deliver the same to the clerk of the assize to be annexed to the precept thus,

Grand jury.

Oxfordshire } The names of the grand jury to en-
to wit. } quire for our sovereign lord the king,
and the body of the said county (here insert their
names underneath, and the hundred they live in.)

Also on a separate piece of parchment, ingross the names of the jury, who are to try between the king and the prisoners, and at the foot thereof, add the several bailiffs names, who gave them notice.

Oxfordshire } The names of the jury to try between Common jury.
to wit. } our sovereign lord the king and the
prisoners, (here insert the names) and at the end
of each, put the sheriff's name.

The sheriff generally sends three or four days
before the circuit begins, to the judges of assize,
the calendar of the prisoners, by what justice com-
mitted, and for what cause, what prisoners are
bailed, and by whom, wrote on plain paper, and
delivered in town, the form of which is as fol-
lows ;

Oxfordshire } The calendar of all the prisoners be- Calendar of pris-
to wit. } ing in the gaol of the said county, soners.
together with their attachments, indictments, and
all other minuments, any way concerning the said
prisoners.

He is also to annex to the assize process, a copy
of the said calendar of the prisoners and their com-
mitments, &c. on parchment as delivered to the
judges.

He is to give the judge's marshal, on the day of
trial, a panel of the jurors, summoned between
party and party, ingrossed on parchment.

Oxfordshire } The names of the jury, between Panel of jurors
to wit. } (insert the bailiffs that summoned of nisi prius.
them,) to which is added, issues upon each of
them, 40 s. also to make tickets of those names
and hundreds, with the jury's addition of trade,
being an exact copy of the panel upon strong
paper, to put in the jury box, &c.

Oxfordshire } J. B. Esq. sheriff of the county afore- Warrant to sum-
to wit. } said, to the bailiff of the hundred of mon the assises.
greeting: By virtue of the precept of

Edward Willes, Esq. and *Francis Buller*, Esq.
justices of our said lord the king, assigned to take
all assizes, jurats, and certificates, &c. I command
you, that you do not omit, by reason of any liberty
within my bailiwick, but that you cause to come
before the said justices at *Oxford*, in the county
aforesaid, on the day of next
coming, all writs of assize, jurats, and certificates,

before whatsoever justice to be taken, &c. and also, that you cause to come before his majesty's said justices, at the time and place aforesaid, such, and so many honest and lawful men of the hundred aforesaid, whose names are hereunder written, to do those things which on the part of our said lord the king, shall be then and there enjoined them. I command you also, that you make public proclamation, in, and through the whole hundred aforesaid, that all those who will prosecute against any prisoner, in any prison or gaol in the county aforesaid, that they be then and there present to prosecute against them, as shall be just. And also, that you give notice to all justices of the peace, chief constables, coroners, stewards, and bailiffs of liberties, within the hundred aforesaid, that they be then and there with their rolls, records, indictments, and other memorandums, to do those things which in this behalf shall belong unto them to be done. And further, by virtue of the several writs of our said lord the king, to me directed, I command you, that you have before the said justices of our said lord the king, at the time and place aforesaid, the bodies of the several jurors whose names are hereunder written, to serve upon the several juries hereunder mentioned, and that yourself be there in your own person, to attend, do, and perform all those things which belong to your office: And that you have then and there the names of the said justices, chief constables, coroners, stewards, bailiffs of liberties, jurors, &c. Given, &c. and in the twenty-sixth year of the reign of our sovereign lord *George the third*, by the grace of God, of *Great Britain, France, and Ireland*, king, defender of the faith, and so forth, and in the year of our Lord 1786.

Grand jury. Jury between party, Crown jury.
and party.

N. B. The names are only to be inserted, which each bailiff is to summon.

Oxon } *J. B.* Esq. sheriff of the county afore-
to wit. } said, to *John Doe*, my bailiff, for this
purpose only, greeting: By virtue of his majesty's
writ to me directed, these are to charge and com-
mand you, that notwithstanding any liberty in my
county, you enter the same, and summons, dis-
train, and take the several persons hereunder nam-
ed, so that they be, and appear before the justices
assigned to take the assizes, to be holden for my
county at *Oxford*, on *Monday*, the —— day of
July next, to answer to his majesty for several
trespasses, contempts, and offences for which they
stand indicted: And hereof, fail not at your peril.
Given under the seal of my office, this day
of in the year of our Lord 1786.
Here insert the names as before.

Precept for the
assize process.

Oxon } *J. B.* Esq. sheriff of the county afore-
to wit. } said, to *W. R.* my bailiff, greeting:
these are to will and require you, immediately upon
sight hereof, that you warn the several persons
hereunder named, so that they be and appear before
his majesty's justices of assize at on the
day of and then and there to serve as jurymen
in a cause between plaintiff, and
defendant. Hereof fail not at your peril. Given
under the seal of my office, this day of
1786. Sir *E. H.* Baronet, and all } By the same
the others, as in the panel sent. } sheriff.

Precept to sum-
mon a special
jury.

Where there is to be a view, add the following.
And I do also hereby authorise and require you, to
summon the first twelve persons named herein, so
that they do appear to take a view of the place in
question, on the day of instant, and
that they meet in order thereto, at one of the clock
in the afternoon of the same day, at the house called
or known by the name or sign of the
in By the same sheriff.

A. B. against *C. D.*

By virtue of a rule of court made in this cause, you are hereby summoned to appear at a certain
house,

Bailiff's sum-
mons.

house, called or known by the name or sign of the
in on the day of
instant, by one of the clock in the afternoon of the
same day, in order to view the place in question.

J. B. Esq. Sheriff.

Having now summoned the assizes, please to
make the following returns to the several pre-
cepts.

Return to the
precept of gaol
delivery, signed
by the clerk of
assize.

The execution of this writ appears in divers
panels hereunto annexed; and further, I have made
public proclamation through my whole bailiwick,
that all they who will prosecute against them, or
any of them, for any thing within contained on
the part of our lord the king, or for themselves,
that they be then and there with their bills in form
of law to prosecute. I have given notice also to
all justices of the peace, mayors, coroners, bailiffs
of liberties and hundreds, and constables of hun-
dreds, in the county aforesaid, that they respec-
tively be then and there with their rolls, records,
indictments, and all other remembrances, to do
those things which to their several offices in that
behalf appertain, to be done as is within command-
ed. The answer of.

The return to the
precept of oyer
and terminer
signed by the
judges.
Ditto of the gaol
delivery signed
by the judges.
Return of sum-
mons on an in-
dictment at the
assizes.

The execution of this writ appears in divers
panels hereunto annexed. The answer of.

The execution of this writ appears in divers
panels hereunto annexed. The answer of.

The within named *A. B.* and *C. D.* are sum-
moned by good summoners, to wit, *E. F.* and *G.*
H. (the bailiff's names.)

John Doe,
and
Richard Roe.

Return of nihil.

But the within named *J. K.* and *L. M.* have
nothing, nor hath either of them any thing in my
bailiwick, by which they, or either of them can be
attached, nor are they or either of them found in
the same.

Return of capias
on indictment
at assize.

By virtue of this writ to me directed, I have
taken the bodies of the within named *A. B.* and
C.

C. D. whom I have before the king's justices within named, at the day and place as within I am commanded, but the within named *E. F.* and *G. H.* are not, nor is either of them found in my bailiwick. The answer of.

The execution of this precept appears in divers panels to the same precept annexed. And further I have made proclamation through my whole bailiwick, that all they who will prosecute against them for any thing within contained, on the part of our lord the king, or for themselves, that they be then and there with their bills in form of law to prosecute. I have also given notice to all justices of the peace, mayors, coroners, escheators, and stewards; and also to all chief constables and bailiffs, of every hundred and liberty within my county, that they be then and there in their own persons, with their rolls, records, indictments, and other remembrances, to do those things and to which their offices in that behalf appertain to be done, as within I am commanded. The answer of.

Return of assize precept signed by the clerk of assize.

By the common law, the sheriff, could return no issues, upon a *ven. fac. jurato.* neither was it needful to return any great issues upon writs of *habeas corpora*: but for the more expedition of justice, and speedy trial of issues (which in former times were greatly delayed,) for want of compelling-jurors to appear, by the *stat. of 35 H. 8. c. 6. s. 4.* it is enacted, "That upon every writ of *ha. corp.* or *distringas*, with a *nisi prius* delivered of record to the sheriff, &c. to whom the making of the return doth appertain, the said sheriff, &c. shall return issues upon every person impanelled, and returned upon any such writs, at the least 5 s. upon an *alias*, 10 s. *pluries*, 13 s. 4 d. and double that sum upon every other."

What issues the sheriff must return upon *habeas corpora*, or *distringas*.

By *stat. 27 El. c. 6.* "The issues upon the first *distringas* are enlarged to 10 s. the second 20 s. and 30 s. on the third."

"No

Upon attaint.

“ No sheriff or other officer, shall return in the
 “ king’s courts, less issues in actions of attaint,
 “ than 40s. upon the first writ of distress, and 5l.
 “ on the second writ of distress, and double upon
 “ every other writ of distress, against the persons
 “ impanelled and returned to be jurors in the same
 “ action, upon pain to forfeit twenty pounds to the
 “ king and party grieved.” 11 H. 7. c. 21. 23
 H. 8. c. 3. & 13 Eliz. c. 25. By 3 Geo. 2. c. 25.
 s. 13. 5l. and not less than 40s. as the judge shall
 think reasonable.

Patents and Accompts.

Fees for suing out Patents, and passing Accompts.

Clerks and officers concerned in passing sheriffs patents, or their accounts, to take only the fees in the schedule annexed, on forfeiture to the party grieved of 50 l. and treble the sum taken above the said fees, with treble costs, to be ordered on complaint by the Exchequer, in a summary way.

FOR the greater ease of the sheriffs in the execution of their offices, and passing their accounts, be it enacted by the kings most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that the several officers of his majesty’s high court of Chancery, court of Exchequer, and the several auditors and receivers of the revenue of the crown in *Wales*, and their respective substitutes, deputies, agents, clerks, and all other officers and persons whatsoever, having and claiming any fee or reward whatsoever to be due and payable to him or them from any sheriff, deputy sheriff, or under-sheriff of any county in *England* and *Wales*, for making out his or their patents or commissions, or the *dedimus* for swearing them into their office, or for entering their recognizance or security, or for writing out and return of their process, or for their apposals, or casting out of court, or for passing their accompts, or for making their *quietus*, or for any other matter or thing whatsoever touching or concerning their sheriffalty, may

may from and after the first day of *Michaelmas* term in the year of our Lord, 1717, severally and respectively, for themselves, and the persons for whom they act and officiate, receive and take for their pains and service in the matters aforesaid, the several fees or sums of money in the schedule or list hereafter mentioned or specified, all which fees in the said schedule mentioned the said several and respective officers, deputies, clerks, and other persons, may claim, take, and receive, from time to time, and shall not demand, take, or receive any other or greater fee or reward whatsoever, in any wise touching or concerning the premises in the said schedule mentioned, or any other matter or thing relating to the patent or swearing of any sheriff, or to the passing of his accounts; and if any person shall offend herein, such person shall forfeit to the party aggrieved five pounds, and treble the sum by him taken, over and above just fees mentioned in the said schedule, together with his treble costs; all which shall be ordered, awarded and given to the party aggrieved by the court of *exchequer*, upon complaint and proof of such offence made and exhibited before the barons of the said court in such short and summary way and method as to them shall seem meet. 3 Geo. 1. c. 15. s. 1.

And whereas, the profits payable by the sheriffs of the several counties of *England*, into the receipt of the *exchequer* at *Easter* and *Michaelmas* yearly, remain the same at this day that they anciently were, although many of the rents and certainties, out of which the said payments arise, have, of late years, been alienated from the crown; Be it further enacted by the authority aforesaid, That the lord high treasurer of *Great Britain*, or commissioners of the treasury for the time being, the chancellor and chief baron of his majesty's court of *exchequer*, and the rest of the barons of that court, or any two or more of them, shall, and may, from time to time, at the request of any sheriff or sheriffs, or as often as they shall think

The lord treasurer, chancellor of the *exchequer*, and barons, or any two of them, may order clerks and officers of the *exchequer*, &c. to give in a particular of rents and certainties yearly, set in process to the sheriffs, and reduce and settle the same, with regard had to the value of the rents of each county, and orders there-

fit

upon to be made and entered of record in the exchequer; and the rents so settled to be the profers of each county, payable to the sheriff, and no other.

fit, call before them the remembrancer in the court of *exchequer*, (commonly called the treasurer's remembrancer,) and the clerk of the pipe, or their deputies, secondaries, and such other officers as they shall think fit; and shall cause the said officers, or some of them, to bring before them an account or particular of all the rents and certainties written out yearly in processes, to the sheriff of each respective county in *England*, to levy for the crown; and upon due examination and consideration thereof, had, are hereby required and impowered from time to time, to alter, diminish, reduce, or to establish the several sums wherewith the said sheriffs stand, or shall stand chargeable on the rolls of profers in the said court of *exchequer*, to such reasonable and moderate sums as to them shall seem just and reasonable, with regard to the amount or value of the rents in each county respectively; and that orders of the court of *exchequer* be drawn up pursuant thereunto, and entered upon record in the several offices of his majesty's remembrancer, the lord treasurer's, or the commissioners of the treasury's remembrancer, and clerk of the pipe, some time before the last day of *Michaelmas* term then next following; and that from time to time, the sum and sums of money so reduced, ascertained, and settled, shall be deemed and taken to be the profers of each respective county, and the rolls of profers, from time to time shall be made conformable thereunto; and the said sum and sums so reduced, ascertained, and settled as aforesaid, and no other shall be paid by the said respective sheriffs for their profers, at the days and times, and in the manner formerly used for profers. *f. 2.*

Sheriff not obliged to charge in his accounts, money paid by virtue of the acts 4 and 5 of W. and M. for apprehending high-

And whereas, by virtue of an act made in the fourth and fifth years of the reign of their late majesties king *William* and queen *Mary*, for encouraging the apprehending of highway-men; and of one other act made in the 6th and 7th years of his said late majesty king *William* the third, to prevent

prevent counterfeiting and clipping the coin of this kingdom; and of one other act made in the 5th year of her late majesty queen *Anne*, for encouraging the apprehending of house-breakers, the respective sheriffs of *England* and *Wales*, are obliged to pay the several rewards of 40*l.* as in those acts is directed, upon the convictions of highway-men, clippers, coiners, or house-breakers, to such person or persons who shall bring to such sheriff a certificate under the hand of the judge or justices before whom such offenders were convicted, directing payment thereof, under the penalty of forfeiting to the party intitled thereunto, double the sum so certified, with treble costs of suit; which said reward of 40*l.* being so paid, as aforesaid, is by the said several acts ordered to be allowed to such sheriff upon his account; and if there should not be remaining in the hands of such sheriff, monies sufficient for that purpose, that in such case, the surplusage occasioned thereby, should be repaid to such sheriff as the lord high treasurer, or the commissioners of the treasury for the time being, out of the revenue of the crown, upon certificate thereof from the clerk of the pipe, or by the auditor of *Wales*, as by the said respective acts may more at large appear: And whereas, since the making of the said acts it hath been found, that many sheriffs have been put under great difficulties and inconveniences thereby, not only by reason of paying down great sums of money for the rewards aforesaid, before the public revenue writ out to them in process could be levied or collected by them, but also by reason that such sheriff cannot have a certificate of his surplusage from the clerk of the pipe, or the auditor of *Wales*, until he hath fully finished his account, and be dismissed the court; by which means, the sheriff is kept a long time out of his money so disbursed for the rewards aforesaid: Be it therefore enacted by the authority aforesaid, That no sheriff shall be obliged to bring or charge in his accounts, any sum

way-men, or 6 and 7 W. 3. for preventing counterfeiting and clipping the coin, or 5 Anne, for apprehending house-breakers; but may on the judge's certificate of the conviction of such offenders, and the receipt of the party intitled to the reward, apply to the lord treasurer, &c. who shall forthwith repay him the sums so disbursed, without fee.

sum or sums of money to be paid for the rewards above mentioned, or any of them from and after the 9th day of *July* 1717, but shall, and may immediately apply for the same to the lord high treasurer of *Great Britain*, or commissioners of the treasury for the time being, who, upon inspecting a certificate of the due conviction of such offender or offenders, for which such reward shall be ordered to be paid as aforesaid, by virtue of the said acts, or any of them, together with the receipts or acquittance of the parties entitled to receive the same, shall forthwith pay to such sheriff or sheriffs respectively, all such monies so disbursed and paid as aforesaid, without any fee or reward whatsoever; any thing in the aforesaid acts, or any of them, contained to the contrary thereof, in any wise notwithstanding. *f. 4.*

No sheriff or under-sheriff to be attached, &c, for not finishing his accounts but by writ under the Exchequer seal or by warrant of a baron wherein such sheriff's name and offence, shall be inserted.

That no sheriff or under-sheriff shall be attached or taken in custody by any officer of the court of *exchequer*, or other person whatsoever, for not being apposed upon any writ or process for not finishing his accounts in due time, or for any contempt or neglect whatsoever relating to his account, but by writ under the seal of the said court of *exchequer*, or by warrant for that purpose to be signed by the lord chief baron, or one of the barons of the *coif* of the said court of *exchequer* for the time being, to be executed by the marshal of the said court, or his deputy; in which warrant the name of such sheriff or under-sheriff shall be particularly inserted, and his offence particularly specified and expressed. *sect. 5.*

If any clerk or other person concerned in passing sheriff's accounts, shall hinder or retard the same, or any way prevent his being apposed, and cast out of court in due time, or after payment or

And for preventing delays and unnecessary attendance of the sheriffs in passing their accounts, be it enacted by the authority aforesaid, that from and after the first day of *Michaelmas* term in the year of our lord, 1717, if any officer, clerk, or other person concerned in or about the passing of sheriffs accounts, shall wilfully retard or hinder any sheriff in the passing of his accounts, or by his wilful neglect or absence, or by other undue means
and

and ways prevent any sheriff from being apposed or cast out of court in due time, or after payment or tender of his or their due fees herein ascertained, shall refuse or neglect to inroll, make out, sign and deliver his *quietus* in due time, in every such case the person so offending shall make such recompense and satisfaction to the party aggrieved, as shall be adjudged, ordered, or decreed, by the barons of the court of *exchequer*, upon complaint thereof made and exhibited before them in such short and summary way and method as to them shall seem meet.

sect. 6.

And whereas it frequently happens that a sheriff may disburse more money for the service of the crown than his whole charge amounteth to, by reason whereof such sheriff must necessarily be in surplufage upon his account: and whereas such surplufage cannot be obtained by the usual course of the *exchequer*, but by record of surplufage, which is very dilatory and expensive to the sheriff; be it therefore enacted by the authority aforesaid, that from and after the first day of *Michaelmas* term aforesaid———if any sheriff of any county in *England* (except the counties palatine of *Chester*, *Durham*, and *Lancaster*, and the several counties of *Wales*, which do not pass their accounts before the clerk of the pipe) shall happen to be in surplufage upon his account, by reason of any disbursements whatsoever by him made for the service of his majesty, his heirs or successors (other than for the rewards of 40*l.* severally and respectively allowed and given by virtue of the several acts herein before mentioned, to such persons as shall apprehend a clipper, coiner, highwayman, or housebreaker) such sheriff shall not be obliged to take out a record of surplufage for the same, but shall and may apply to the lord high chancellor, or to the commissioners of the treasury for the payment of such surplufage from the clerk of the pipe or his deputy.

sect. 7.

tender of fees, *infra*, shall refuse or neglect to make out, or sign and inroll his *quietus*, he shall make such satisfaction to the party grieved, as the barons on complaint shall order in a summary way.

No sheriff in *England* (except for *Chester*, *Lancaster*, *Durham*, and the *Welsh* counties) who shall be in surplufage by any disbursements for the king's service, except the rewards appointed by the acts *supra* sect. 4. shall be obliged to take out a record of such surplufage, but may apply to the lord treasurer, who is to pay the same on producing the clerk of the pipe's certificate thereof.

And

Besides the penalties in the acts of 22 and 23 Car. 2. for better recovery of fines and forfeitures to the king made perpetual by 4 & 5 W. & M. The barons may amerce clerks of the assize, of the peace, and commissioners of sewers, clerks of the market, town clerks, &c. refusing or neglecting to return estreats into the Exchequer, according as the said acts direct, and may cause such amerciaments to be levied as usual.

And for the more effectual enforcing and obliging the respective clerks of assize, clerks of peace, clerks of the commissioners of sewers, clerks of the market, town clerks, or other persons to whom it doth or may belong to make returns of estreats into the court of *exchequer*, to make out and deliver their respective estreats, duplicates, certificates, and schedules in due time, so that the sheriff may not be hindered or retarded in the passing of his account for want of the said estreats, according to the direction, purport, and intent of an act made in the 22 d. and 23 d. years of the reign of his late majesty King *Charles* the 2 d. intituled, *an act for the better and more certain recovery of fines and forfeitures due to his majesty*, and made perpetual by an act made in the 4th and 5th years of the reign of their late majesties King *William* and Queen *Mary*; be it enacted by the authority aforesaid, that over and above the penalties mentioned in the said acts or either of them it shall and may be lawful to and for the barons of the court of *exchequer*, from time to time, to amerce such clerk of the assize, clerk of the peace, clerk of the commissioners of sewers, clerk of the market, town clerk, or other person, to whom it doth or may belong to make returns of estreats into the said court of *exchequer* as aforesaid, for refusing, neglecting, or omitting to perform, and do his or their duty in returning the said estreats, at the times, and according to the direction, purport and intent of the said two acts, and to cause the said amerciaments to be levied and answered by such ways and means, and in such manner, as other amerciaments set in the said court may or have been used to have been done. *sect. 12.*

Sheriffs of Wales to account before the auditor.

“ The sheriffs of *Wales* shall not be compelled
 “ to appear to be apposed in the *exchequer*, but
 “ shall be apposed before his majesty’s auditor in
 “ *Wales*; and the *quietus* of the said sheriffs under
 “ the auditor’s hand shall be a sufficient discharge.” *Ibid. sect. 24.*

“ The

" The auditors of *Chester, Lancaster and Durham*, shall state the accounts of the sheriffs of the said counties, and appose them touching the execution of the king's process; and the said sheriffs, on such accounts may sue forth their *quietus est* from the said auditors, according to the ancient usage." *Ibid. sect. 25.* Countiespalatine

" The sheriff of the city of *Chester* shall account as formerly before the mayor, touching all matters granted from the crown to the city by charter." *Ibid. sect. 26.* City of Chester.

The sheriffs of the city of *Chester*, as for all other matters not granted to the city, and for which the sheriffs are accountable to his majesty, shall account for the same before, and be apposed by, and obtain their *quietus est*, from the auditor of the county of *Chester*, in the same manner as the sheriffs of the county of *Chester*." *Ibid. 27.* Sheriff of the city of Chester to account before the auditor of the county.

A Schedule of Fees to be paid for passing the Patents of the several Sheriffs of England and Wales.

The Charge taken and received in the Court of Chancery on Account of suing out of the Patents of the several Sheriffs of England and Wales, that are sued out there, for each the Particulars are, as followeth:

	£.	s.	d.
THE king's duty for stamps	0	12	6
To the serjeant trumpeter	3	0	0
To the master of the rolls	0	8	8
Signing the docquet	0	4	0
Hanaper fee	0	15	0
The six clerks fee on the patent, writ of assistance, writ of discharge, and <i>dedimus potestatem</i>	1	7	0
For ingrossing the patent, writ of assistance, writ of discharge, <i>dedimus potestatem</i> ,			
C c			

Patent and Accompts.

	£.	s.	d.
<i>poteslatem</i> , the three oaths, the doc- quet parchment, and attending the sealing the patent	-	-	1 14 4
The recognizance and duty in a <i>Welsh</i> patent, more	-	-	0 3 6

*Fees to be paid by the Sheriffs of England and
Wales for passing their Accompts.*

*Fees to be paid to the Clerk of the Pipe at the Appoal
of Sheriffs.*

	£.	s.	d.
CANT'	—	1	13 4
Cumbr'	—	1	13 4
Ebor'	—	5	0 0
Hunt'	—	1	6 8
Lond' and Mid'sex	—	2	0 0
Lincoln	—	2	13 4
Monmouth	—	1	13 4
Northumbr'	—	1	13 4
Rutland	—	1	6 8
Westmor'	—	1	6 8
The rest of the counties of <i>England</i> , each	2	0	0

*Fees to be paid to the Clerk of the Pipe at casting out of
Court, and for the Quietus, and Chancellor's Al-
lowance.*

	£.	s.	d.
CANTAB' Hunt	—	4	3 4
Cumb'	—	2	6 8
Ebor'	—	10	3 4
Kent	—	4	3 4
Lond' Mid'sex	—	5	6 8
Monmouth	—	2	16 8
Northumber'	—	2	16 8
Rutland	—	1	16 8
Westmor'	—	2	3 4
The rest of the counties of <i>England</i> , each	3	3	4

Casual

Casual Fees to the Clerk of the Pipe for the Allowance of Justices Wages in the Counties following, viz.

	£.	s.	d.
E BOR' —————	1	0	0
Lond' Mid'sex —————	0	13	4
Lincoln —————	0	10	0
The rest of the counties of <i>England</i> , if any such allowance be made —	0	6	8
For setting of a seizure or debt by peti- tion, or judgment of court, when it happens — — — — —	0	1	0
For allowance of a record of surplusage for the first five pounds —	0	6	8
For every other five pounds —	0	3	4

Fees to be paid to the Clerk of the Pipe for the several Cities and Accompting Towns for their whole Accompt, and Quietus thereupon.

	£.	s.	d.
C IVIT' Bristol' } Civit' Glouc' } of each	1	1	0
Civit' Ebor' } Vil' Novi Castri } Civit' Cantuar } Civit' Coventry } Civit' Exon' } Civit' Litchf' } Civit' Lincoln } Civit' Norwich } of each	0	6	
Vil' Kingston super Hull } Vil' Not' } Vil' Pool } Vil' South'ton }			

Patent and Accompts.

Fees to be paid to the Secondaries, and Others the Sworn Clerks in the said Office, at the Apposals of Sheriffs at the coming into their Accompt, and writing their Annual Books, together with the Vicontels of the Foot or Charge of their whole Accompt.

			£.	s.	d.
B EDD'	—	—	0	6	0
Berks					
Bucks		} each	0	6	0
Cant' Hunt'	—	—	4	13	4
Cornub'	—	—	6	0	0
Cumbr'	—	—	3	13	4
Derb'	—	—	5	0	0
Devon'					
Dorset	} each	—	6	0	0
Essex	—	—	10	6	8
Ebor'	—	—	17	0	0
Glouc'					
Heref'	} each	—	6	0	0
Hert'	—	—	5	6	8
Kant'	—	—	6	13	4
Lincoln	—	—	4	13	4
Leic'	—	—	6	13	4
Lon' Mid'sex, two Sugar Loves and			4	0	0
Monmouth	—	—	3	0	0
Norf'	—	—	6	13	4
North'ton	—	—	4	10	0
Northumbr'	—	—	4	13	4
Nott'	—	—	5	10	0
Oxon'	—	—	6	0	0
Rutl'	—	—	3	6	8
Sur'					
Suffex	} each	—	5	13	4
Salop					
Suff'	} each	—	6	0	0
South'ton	—	—	7	13	4
Staff'	—	—	5	13	4
Somerf'	—	—	9	6	8
					Westmorl'

Patent and Accompts.

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	£.	s.	d.
Westmorl'	2	0	0
Warr'	4	16	8
Wigorn'	6	0	0
Wilts	8	0	0

Fees for casting out of Court, and for Quietus, viz.

	£.	s.	d.
B EDD'	6	0	0
Bucks'	5	6	8
Berks'	5	6	8
Cant' Hunt'	4	13	4
Cornub'	5	13	4
Cumbr'	4	13	4
Derb'	5	6	8
Devon'	8	6	8
Dors'	6	13	4
Effex	11	0	0
Ebor'	23	6	8
Glouc'	7	6	8
Heref'	6	0	0
Hert'	6	13	4
Kant'	11	13	4
Lincoln	6	0	0
Leic'	8	6	8
Lon' Mid'sex two Sugar Loaves, and	4	0	0
Monmouth	3	0	0
North'ton	} each	7	6 8
Norf'			
Not'		6	6 8
Northumbr'		4	13 4
Oxon'		8	6 8
Rutl'		2	0 0
Staff'		6	13 4
Surr'	} each	5	16 8
Sussex			
Salop		5	6 8
Suff'		6	0 0
South'ton		8	6 8
Somerset'		10	0 0
	C c 3	Westmor'	

Patent and Accompts.

	£.	s.	d.
Westmor'	-	-	-
Warr'	-	-	-
Wigorn'	-	-	-
Wilts'	-	-	-
	2	8	4
	5	10	0
	7	6	8
	8	13	4

Fees of Sheriffs for Cities and Accompting Towns.

	£.	s.	d.
C IVIT' Bristol	-	-	-
Civit' Cantuar'	-	-	-
Civit' Ebor'	-	-	-
Civit' Coventry	-	-	-
Civit' Exon'	-	-	-
Civit' Gloue'	-	-	-
Civit' Lincoln	-	-	-
Civit' Litchf'	-	-	-
Civit' Norwic'	-	-	-
Civit' Wigorn'	-	-	-
Vil' Kingston super Hull	-	-	-
Vill' Nott'	-	-	-
Nov' Castrum	-	-	-
Vil' Pool	-	-	-
Vil South'ton	-	-	-
	3	6	8
	2	13	4
	5	0	0
	2	13	4
	1	10	0
	2	13	4
	2	13	4
	1	6	8
	3	6	8
	2	0	0
	3	6	8
	2	0	0
	2	13	4
	1	10	0
	2	0	0

Memorandum, *The Sheriffs of the Counties-Palatine of Chester and Lancaster do not accompt before the Clerk of the Pipe, but before the respective Auditor of those Counties; but their Books being writ every Year, and Certificates made (of what they take in Charge) to the Auditor, the following Fees are to be taken by the Clerk of the Pipe, and the sworn Clerk for those Counties, (viz.)*

	£.	s.	d.
Chester	-	-	-
Lancast'	-	-	-
	2	3	4
	4	6	8
Fees to the first secondary for allowing the sheriff's tallies of profer in each county	-	-	-
In each city and town	-	-	-
Making up the sheriff's sum containing his whole charge in York	-	-	-
	0	13	4
			Lond'

Patent and Accompts.

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	£.	s.	d.
Lond' Midd'sex	-	-	0 13 4
For the rest of the counties, each	-	-	0 6 8
Allowing a talley <i>de remanente compi</i> or any other talley <i>de sol</i> in his account, when such happen	-	-	0 1 0
For charging a post scrow, which rarely happens	-	-	0 3 4
To the second secondary for drawing down a debt received by <i>disfring</i> , or levied by writ of <i>feri facias</i> from either of the remembrancer's office upon the scrow back	-	-	0 3 4
If an extraordinary length	-	-	0 6 8

To the Portubag.

	£.	s.	d.
FOR ingrossing the scrow of green wax of the sheriff of the county of York	-	-	1 0 0
Lond' Midd'sex	-	-	1 0 0
The rest of the counties of <i>England</i> , each	0	10	0
For the accompting towns and cities, each	0	3	4

Casual and Accidental Fees to the sworn Clerks in their respective Assignments, viz.

	£.	s.	d.
FOR a <i>constat</i> of a seizure or debt in order to be ruled, or discharged	-	0	4 4
For settling of a seizure or debt upon a sheriff's accompt, by petition or judgment of court, when it happens	-	0	3 4
Filing the certificates of felons goods, and charging the debts therein contained, each	-	0	6 8

For the Allowance of Justices Wages.

	£.	s.	d.
YORK	-	-	2 0 0
Lond' Midd'sex	-	-	2 0 0
C c 4			Lincoln

Patent and Accompts.

	£.	s.	d.
Lincoln	1	0	0
The rest of the counties of <i>England</i> , each	0	13	4

For the Sheriffs Allowances.

	£.	s.	d.
E BOR'	0	13	4
Lond' Midd'sex	3	6	8
The rest of the counties, each	0	6	8
Record of surplusage for the first five pound	0	6	8
For every other five pound	0	3	4

To the writing Clerk for the Business of the Whole Year.

	£.	s.	d.
C ANT' Hunt'	5	0	0
Cornub'	6	0	0
Devon'	6	0	0
Ebor'	15	0	0
Kant'	7	0	0
Lincoln	6	10	0
Lond' Midd'sex	6	0	0
Monmouth	3	0	0
Rutland	1	0	0
Somers'	7	13	4
Suffex	3	10	0
Westmor'	2	0	0
The rest of the counties, each	5	0	0
Civit' Bristol	1	0	0
Civit Ebor'	1	0	0
Civit' Norwic'	1	0	0
Kingston super Hull	0	18	4
Novum Castrum	1	0	0
Vil' Pool	0	6	8
The rest of the cities, each	0	13	4
Com' Pal' Cester'	0	6	8
Com' Pal' Lanc'	0	13	4

To be paid to the bagman of the office at the apposal of the sheriffs,

Of *England*, in each county, two shillings and six pence, and the casting out 0 5 0
 And for each city and accompting town 0 2 6

Fees

Fees to be paid to the Comptroller of the Pipe.

	£.	s.	d.
F OR appofal of <i>London, Middlesex,</i> and <i>York</i> , each - - -	2	0	0
For appofal of <i>Surry, Suffex, Rutland,</i> and <i>Westmoreland</i> , each - - -	0	15	0
For appofal of every other county -	1	7	6
For cafting out of <i>London, Middlesex,</i> and <i>York</i> , each - - -	2	0	0
For cafting out of <i>Surry, Suffex,</i> and <i>Rutland</i> , each - - -	0	15	0
For cafting out of every other county	1	10	0
For return of fummone for <i>London, Mid-</i> <i>dlesex,</i> and <i>York</i> , each - - -	0	5	0
For return of every other fummone -	0	2	6
For petitions which feldom happen	0	2	6

The Fees to be taken by the three Clerks of the Comptroller of the Pipe, in paffing Sheriff's Accompts.

	Appofals.	Cast. out.
	£. s. d.	£. s. d.
B EDD' Hertf' } each	1 2 6	1 0 0
North'ton		
Surr' Rutld' } each	1 5 0	1 5 0
Lond', Midd'sex	1 5 0	3 5 0
Cambr'		
Heref'		
Leic'		
Norf' } each	1 12 6	1 10 0
Nott'		
Staff'		
War'		
Suffex } each	0 15 0	1 15 0
Derb'		
Oxon }	1 19 2	1 16 8

Patent and Accompts.

		£. s. d.	£. s. d.
Cant' Hunt	} each		
Glouc'		2 2 6	2 0 0
Kant'			
Essex	} each		
Bucks			
Monmouth			
Berks	} each	2 9 2	2 6 8
Suffolk			
South'ton			
Worcester	} each		
Wilts			
Salop			
Northumbr'	} each	2 9 2	2 6 8
Lincoln			
Cornwall			
Devon'	} each	3 9 2	3 6 8
Dorset			
Somerset			
Ebor'		4 16 8	4 16 8
Westmar'		0 17 6	0 17 6

For return of every summons seven shillings and six pence, except *London*, *Middlesex*, fifteen shillings, *York* one pound and five shillings, and *Cornwall*, *Devon*, *Dorset*, *Lincoln*, *Somerset*, *Suffolk*, *South'ton*, *Wilts*, and *Salop*, each seventeen shillings and six pence. For the petition of allowance three shillings and six pence, except in *London*, *Middlesex*, and *York*, thirteen shillings and four pence; and in *Cornwall*, *Devon*, and *Somerset*, six shillings and eight pence each; for every other petition one shilling; and for the justices wages in *London* and *Middlesex*, ten shillings.

Fees to be paid by Sheriffs in the King's Remembrancer's Office, upon giving Security when he enters into his Office.

	£. s. d.
THE stamp duty of the recognizance	0 10 0
The caption fee before the baron	0 8 8
	The

	£.	s.	d.
The king's remembrancer's fee for the same, for the counties of <i>York</i> and <i>Norfolk</i> , for each of them -	0	13	4
To him for every county of <i>England</i> , except <i>Lancaster</i> and <i>Durham</i> , and the several counties of <i>Wales</i> , which give no security in the <i>exchequer</i> -	0	10	0
To the attorney for making the recognizance, attending the baron, entering and inrolling the recognizance, making the <i>fiat</i> , and duty for the same, and filing the warrant of attorney	0	18	0
Upon the apposal of every sheriff upon the process returnable in <i>Easter</i> term to the deputy remembrancer -	0	5	0
To the attorney that receives and files the writs, and attends the apposals of the sheriffs - - -	0	4	4
The like upon the process returnable in <i>Michaelmas</i> term - - -	0	9	4
For making the certificate when the sheriff enters upon his accompt of what seizures are by him made upon the process returned in that office during this year - - -	0	4	4

Treasurer's Remembrancer's Office in the Court of Exchequer.

Fees taken of Sheriffs in the said Office on passing their Accounts by the Remembrancer.

	£.	s.	d.
U PON a baron's warrant for respiting a sheriff's apposal, or for a day over to finish his accompts -	0	4	0
Upon the view of a sheriff's accompts in <i>Easter</i> and <i>Michaelmas</i> term -	0	6	8
Upon the commission to swear a sheriff in the country to accompt -	0	6	8
		Upon	

Patent and Accompts.

	£.	s.	d.
Upon examining and ruling a sheriff's petition of allowance for the two days granted <i>ex gratia curiæ</i> for finishing his accompt, and for filing his affidavit of felons goods - - -	0	12	0
Upon examining and ruling any other petition in a sheriff's accompt, when any such happens - -	0	3	4
Upon a record of surplusage for the first five pound - - -	0	6	8
For every other five pound -	0	3	4
For filing any <i>constat</i> , warrant, or other exhibit - - -	0	1	0

By the sworn Clerks.

	£.	s.	d.
FOR making the view of a sheriff's accompt in <i>Easter</i> and <i>Michaelmas</i> term, five shillings each term, <i>viz.</i> - - -	0	10	0
For giving a sheriff notice termly, during his year of office, of any information or plaint against him, according to the statute in that case made and provided, and for attending his apposals before the barons, and in <i>Easter</i> and <i>Michaelmas</i> terms, twenty shillings each term, <i>viz.</i> - - -	2	0	0
For drawing any warrant to be signed by the chancellor, or a baron - - -	0	6	8
For attending a baron for his hand thereto - - -	0	3	4
For directing a sheriff in his business during the three terms he is upon his accompt, ten shillings each term, <i>viz.</i> - - -	1	10	0
For making the commission to swear a sheriff in the country to accompt pursuant to a warrant from a baron for that purpose - - -	0	10	0
For the oath thereunto annexed - - -	0	6	8
For			

	£.	s.	d.
For a high sheriff's warrant to be sworn to accompt, (when he comes in person) and for attending his being sworn	1	0	0
For an under-sheriff's warrant	0	3	4
For attending and putting in a sheriff's bills of profers at the receipt of <i>exchequer</i> in <i>Cro' Cli' Pasche & Cro' Sci' Mich'</i> when this year is ended, at his swearing to accompt	1	6	8
For entering the two days <i>ex gratia curiæ</i>	0	6	8
For drawing a sheriff's oath touching felons goods	0	6	8
For a copy thereof to transmit to the pipe	0	3	4
For a certificate of the execution of a process	0	6	8
For a search in order to make such certificate	0	3	4
For drawing any petition in parchment, and inrolling it	0	6	0
For inrolling a sheriff's bill of allowance	0	13	4
For inrolling a schedule in <i>onere constat</i> , or warrant by the roll	0	6	8
For a record or surplufage for the first five pounds	0	6	8
For every other five pounds	0	3	4
For copying any seizure made by a sheriff, <i>per sheet</i>	0	0	8
For examining and signing the same	0	3	4
For a writ of assistance and seal	0	10	0
For attending at <i>Westminster</i> to dismiss a sheriff the court, on finishing his accompt	0	6	8

By the Filazer.

	£.	s.	d.
FOR entering a high sheriff's commission, or warrant, <i>ad computand'</i> on the scroll of accomptants	0	5	0
3			For

Patent and Accompts.

	£.	s.	d.
For an under-sheriff's warrant, and any warrant <i>ad recipiend' brevia</i> -	0	2	0
For the sheriff's tallies of profers -	0	2	0
For entering a sheriff's writs on the bills -	0	2	0
And when he comes <i>post diem</i> and amer- ciaments are set by the court, then for each amerciamment one shilling, being usually six during his year, viz.	0	6	0

When any plea, composition, order, or the like, happens during a sheriff's accompt, through his defaults or contempts, he pays the same fees that are paid by other suitors.

There have been some small Fees, time out of mind, paid to the under Clerks, viz.

	£.	s.	d.
F OR writing a warrant or affidavit	0	1	0
On return of process twice a year, five shillings, viz. -	0	10	0
For ingrossing a commission, and oath annexed -	0	5	0

As likewise to the Portubag, viz.

	£.	s.	d.
F OR carrying any writ to be sealed	0	0	6
For a commission -	0	1	0
A sheriff pays him at each of his appo- sals two shillings, viz. -	0	4	0
And for postage of all his business, dur- ing the time he is upon his ac- compt -	0	5	0

A Particular of such Fees as are to be paid by Sheriffs in the Office of Remembrancer of the first Fruits and Tenths in his Majesty's Exchequer.

	£.	s.	d.
FOR attending the sheriff's appo- sals at <i>Westminster</i> upon their return- ing of writs issued for arrears of first fruits, and for sitting the same in <i>Easter</i> term, each	0	4	4
The like for <i>Michaelmas</i> term	0	4	4

Fees to be received by the foreign Apposer, his Deputy, or Chief Clerk, of all Sheriffs of Counties, Cities, and Towns, at their Apposal upon the Summons of the Green Wax, and for making out the Justices Wages when craved by the Sheriff.

Counties.	Apposal.	Justices Wages.
	£. s. d.	£. s. d.
B EDFORD	3 5 0	1 12 6
Berks	3 5 0	1 12 6
Bucks	3 5 0	1 12 6
Cambr' Hunt'	3 5 0	1 12 6
Cornwall	6 5 0	1 12 6
Cumberland	3 5 0	1 12 6
Derby	3 18 4	1 12 6
Devon	7 5 0	1 12 6
Dorset	4 5 0	1 12 6
Essex	6 5 0	1 12 6
Gloucester	4 5 0	1 12 6
Hereford	3 5 0	1 12 6
Hertford	3 18 4	1 12 6
Kent	6 5 0	1 12 6
Leic'	3 5 0	1 12 6
Lincoln	6 5 0	1 12 6
Lond' and Mid'sex	7 10 0	5 10 0
Monmouth	3 5 0	1 12 6
Norfolk	6 5 0	3 5 0
		North'ton

Patent and Accompts.

Counties.	Appofal.			Juffices Wages.		
	£.	s.	d.	£.	s.	d.
North'ton	5	5	0	1	12	6
Nottingham	3	18	4	1	12	6
Northumberland	1	15	0	1	12	6
Oxford	3	5	0	1	12	6
Rutland	1	15	0	0	0	0
Salop	4	5	0	1	12	6
Somerfet	6	5	0	1	12	6
South'ton	3	18	4	1	12	6
Stafford	3	5	0	1	12	6
Suffolk	7	5	0	3	5	0
Surry	3	5	0	1	12	6
Suffex	3	5	0	1	12	6
Warwick	3	5	0	1	12	6
Westmoreland	1	15	0	0	0	0
Worcefter	3	5	0	1	12	6
Wilts	5	5	0	1	12	6
York	9	5	4	3	5	0

Cities.

Appofals.

	£.	s.	d.
B RISTOL	0	17	6
Coventry	0	17	6
Canterbury	0	17	6
Exeter	1	12	6
Glouc'	0	17	6
Litchfield	0	15	10
Lincoln	0	15	10
Norwich	1	12	6
Worcefter	0	17	6
York	0	17	6

Towns.

Appofals.

	£.	s.	d.
K INGSTON fuper Hull	0	15	10
Nottingham	0	17	6
Newcastle upon Tyne	0	17	6
Pool	0	14	2
South'ton	0	17	6

Fees

Fees to be taken by the Clerk of the Extraits in his Majesty's Court of Exchequer, and by the sworn Clerk in that Office, of all Sheriffs accountable in the Exchequer upon their Apposals on the Summons of the Green Wax.

	£.	s.	d.
T O the clerk of the extraits for Northumberland and Westmoreland, each —————	0	10	0
Of London and Middlesex —————	1	2	0
Of the county of Rutland —————	0	13	4
Of every other county, each —————	1	0	0
Of the city of Exon —————	0	10	0
Of every other city and town, each —	0	6	8
To the sworn clerk for writing out the sum- mons twice every year, and attending the ap- posals			

	£.	s.	d.
Of the county of Rutland —————	0	9	2
Of Ebor ^s —————	1	16	8
Of Surrey —————	1	13	4
Of Westmoreland —————	0	16	8
Of the counties of Heref ^s , Hertf ^s , Oxon, Suff ^s , and South'ton, each —————	1	0	0
Of every other county —————	1	6	8
Of the cities of Bristol, Litchfield, and town of Pool, each —————	0	5	10
Of the city of Exon —————	0	10	0
Of every other city and town, each —	0	8	4
The fee due to the chancellor of the ex- chequer, his secretary, and clerk, for passing a sheriff's allowance, to be —	0	15	0

Fees to be taken by the Cursitor-Baron, and his Clerk, of the several Sheriffs of England.

	£.	s.	d.
T O the baron for swearing to their accompt, and signing their war- rant —————	0	16	8
D d			To

Patent and Accompts.

	£.	s.	d.
To his clerk	—	0	4 0
To the baron at their appofals	—	1	0 0
To his clerk	—	0	7 6
To the baron at their casting out of court	—	0	0 0
To his clerk	—	0	7 6
Sheriffs of <i>London</i> and <i>Middlesex</i> , and sheriffs of the county of <i>York</i> , pay double fees, and the sheriffs of <i>Suffex</i> , <i>Surrey</i> , <i>Rutland</i> , and <i>Westmoreland</i> , pay half fees.			

Fees certain and casual to be paid by the Sheriffs to the Marshals of His Majesty's Court of Exchequer, granted to them by Patent under the Great Seal without Salary.

Easter term.

	£.	s.	d.
ALL sheriffs of the counties of <i>England</i> come then to be apposed on their writs and process before the barons, and pay the said marshals (except <i>Rutland</i> and <i>Yorkshire</i> .)	—	0	15 10
<i>Rutland</i> to day half that fee, viz.	—	0	7 11
<i>Yorkshire</i> double	—	1	11 8

Michaelmas term.

The same sheriffs are apposed again on the same writs and process, and to pay their fees as above.

Easter term.

Sheriffs of the cities and towns, and deputies of the cinque-ports, each of them to pay severally upon their appofals then, as followeth, viz.

	£.	s.	d.
L INCOLN, Canterbury, Pool, Gloucester, Wigorn, Nottingham, Coventry, Southampton, Litchfield and deputy of the cinque-ports	—	0	8 8
York, Norwich, Exon, Newcastle, Hull	—	0	13 4
Bristol city	—	0	10 6

THE

	£.	s.	d.	
T HE sheriffs of cities and towns above, apposed then, are to pay the same fees as paid in <i>Easter</i> term, and when sworn to accompt, are to pay more	-	-	-	0 3 0
Bailiffs of liberties sworn to accompt are to pay each	-	-	-	0 0 8
Bristol escheator is to pay	-	-	-	0 3 4

Michaelmas term.

	£.	s.	d.	
S HERIFFS of counties prefixed that term to be sworn, and to take their accompts in charge before the cursitor baron, on the summons of the pipe, and before the foreign apposer upon the green-wax, viz. <i>Essex, Hertford, Kent, Cambridge, Huntington, Northampton, Lincoln, Stafford, Wigorn, Wilts', Cornub', Salop, Berks, and Bucks</i> , are to pay each	-	-	-	1 9 2
<i>Rutland</i> is to pay half that fee	-	-	-	0 14 7
<i>London</i> and <i>Middlesex</i> is to pay his fees for a whole year	-	-	-	5 12 0
<i>London</i> gauger then sworn in court is to pay	-	-	-	0 8 8

Michaelmas term.

	£.	s.	d.	
S HERIFFS of counties sworn and apposed before the cursitor-baron and foreign apposer, as in <i>Michaelmas</i> term, viz. <i>Surrey, Suffex, Oxon, Berks, Norfolk, Suffolk, Hereford, Dorset, Monmouth, Somerset, Derby, Nottingham, Devon, Gloucester, Warwick, Southampton, and Leicester</i> , to pay each	1	9	2	
<i>York</i> pays double	2	18	4	

Hilary term.

Easter term

	£.	s.	d.
S HERIFFS of <i>Cumberland</i> and <i>Nor-</i> <i>thumberland</i> , then prefixed and ap- posed on the summons of the pipe and green wax, before the curfitor-baron and foreign apposer, to pay each -	1	9	2
<i>Westmoreland</i> then to pay his fees for the whole year -	2	6	8
<i>Lancashire</i> for the whole year —	3	10	0
<i>Cheshire</i> for the whole year —	3	6	8
All sheriffs discharged by proclamation in the court, except <i>York</i> —	0	15	10
<i>York</i> is to pay —	1	11	8

Casual fees.

	£.	s.	d.
S HERIFFS attached by order of court or warrant —	1	13	4
Sheriffs in custody <i>per diem</i> , until dis- charged —	0	6	8

If the marshal rides into the country six pence
per mile forwards, and the same backwards,
towards his charges from the sheriff on whose
accompt he goes,

	£.	s.	d.
Every sheriff that hath further time given him by order of court, or warrant to pass his accompt. or to be apposed, to pay — —	0	6	8

*The Fees to be taken by the four Ushers of his Majes-
ty's Court of Exchequer.*

	£.	s.	d.
O F every high-sheriff when he enters on recognizance in the exchequer	0	8	0
Of every sheriff of a county sworn to answer upon his two apposals on the king's remembrancer, treasurer's re- membrancer, and first-fruits process, for each the said apposals —	0	8	0

Of

	£.	s.	d.
Of every sheriff of a city, &c. on each of his said two apposals	—	0	4 0
Of every sheriff of a county sworn to his accompt in court, or elsewhere, and on his apposal on the pipe process before the curfitor-baron	—	0	18 6
Of every sheriff of a city, &c. on the like apposal	—	0	4 0
Of every sheriff of a county at his casting out of court, or finishing his accompt	—	0	8 0
<i>London, Middlesex, and Yorkshire to pay double.</i>			

Fees to be taken by the Court-keeper of his Majesty's Court of Exchequer.

	£.	s.	d.
Of every high-sheriff when he enters on recognizance in the Exchequer	—	0	2 0
Of every sheriff of a county-town to answer upon his two apposals on the king's remembrancer, treasurer's remembrancer, and first-fruits process, for each of the said apposals	—	0	2 0
Of every sheriff of a city, &c. on each of the said two apposals	—	0	1 0
Of every sheriff of a county sworn to his accompt in court, or elsewhere, and on his apposal upon the pipe process, before the curfitor-baron	—	0	3 0
Of every sheriff of a city, &c. on the like apposal	—	0	1 0
Of every sheriff of a county upon his apposal on the summons of green wax before the foreign apposer, and clerk of the estreats	—	0	2 0
If apposed out of term	—	0	2 6
Of every sheriff of a city, &c. on the like apposal	—	0	1 0
D d 3			Of

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£. s. d.

Of every sheriff of a county on his
casting out of court, or finishing his
accompts ———— 0 2 0
London, Middlesex, and York, to pay double.

*Fees to be received by the Messenger of the said Court,
viz.*

£. s. d.

OF every sheriff of a county sworn
to answer upon his two apposals on
the king's remembrancer, treasurer's
remembrancer, and first-fruits process,
for each of the said apposals ———— 0 6 8
Of every sheriff of a city for each of the
said two apposals ———— 0 3 4
London, Middlesex, and York, to pay double.

Fees to be received by the Tipstaff in the said Court.

£. s. d.

OF every high-sheriff when he enters
on recognizance in the exchequer 0 2 0
Of every sheriff of a county sworn to an-
swer upon his two apposals upon the
king's remembrancer, treasurer's re-
membrancer, and first fruits process,
for each of the said apposals ———— 0 2 0
Of every sheriff of a city, &c. sworn
to answer the like apposals ———— 0 1 0
Of every sheriff of a county sworn to
his accompt in court, or elsewhere, and
on his apposal on the pipe process be-
fore the curfitor-baron ———— 0 3 0
Of every sheriff of a city, &c. on his
apposal on the pipe process before the
curfitor-baron ———— 0 1 0
Of every sheriff of a county at his cast-
ing out of court, and finishing his ac-
compt ———— 0 2 0
London, Middlesex, and York, to pay double.

Fees and Allowances to be paid to the Auditors of Exchequer, for making up and passing the under mentioned Sheriffs Accompts, viz.

	£.	s.	d.
FOR inrolling a sheriff's patent, filing the several certificates, drawing and ingrossing the accompt, and for the <i>Quietus</i> of the sheriff of <i>Cheshire</i> and <i>Lancashire</i> , the fees for each county to be	20	0	0
For the county-palatine of <i>Durham</i> , according to ancient custom	9	6	8
For casting out of sheriffs in open court, except <i>London</i> , and <i>Middlesex</i> , <i>York</i> and <i>Lincoln</i> , each county	0	10	0
For <i>London</i> , <i>Middlesex</i> , <i>York</i> , and <i>Lincoln</i> , each county	1	0	0

Fees to be paid by the Sheriffs of Wales to the Auditor of Wales and Cheshire, for the several Sheriffs of Wales.

	£.	s.	d.
FOR every old seizure charged in the sheriffs accompt	0	1	0
For every new seizure charged in the sheriff's accompt	0	2	0
For inrolling a sheriff's patent, filing the several certificates, drawing and ingrossing the accompt, and for the <i>Quietus est</i> for each county	8	18	4

The Fees due to the Receiver of North and South Wales.

	£.	s.	d.
FOR every sheriff upon passing his accompts at the audit for signing his accompts, and entering in the revenue-book	2	13	4

Patent and Accompts.

For the Sheriffs of Cheshire.

FOR inrolling the sheriff's patent, *£. s. d.*
 filing the several certificates, draw-
 ing and ingrossing the accompt, and
 for the *Quietus est* ————— 20 0 0

Whereas it is not reasonable that the sheriffs of this kingdom, who are obliged to take upon them that troublesome and expensive office for the service of their country, should pay those large fees that are demanded of them and of right belong to the officers, and clerks of the chancery, exchequer and pipe for passing their patents and accompts, and obtaining their *quietus's*: And whereas it would be unreasonable to take their due fees from the officers and clerks, or to expect that they should do the duty of their respective offices without a reasonable reward for their labour: And whereas the whole expence of passing the patents and the accompts of the several sheriffs hereinafter mentioned, amounts to 4000*l.* Therefore to the end that the sheriffs may be eased, and justice done to the said officers and clerks, be it enacted that from and after the 29th day of *September*, 1717, the yearly sum of 4000*l.* shall be set apart at the receipt of the exchequer out of such fund as by any act of this session of parliament shall be charged with the said yearly sum, and in such manner as shall be thereby appointed for the uses and purposes hereafter mentioned. 3 *Geo. I. c. 16. §. 1.*

Yearly sum of
4000*l.* set apart
out of the fund
for the purposes
after mentioned.

Yearly allow-
ance to sheriffs
of different
counties.

That there shall be yearly and every year paid out of the monies which shall from time to time be so set apart upon the *first* day of *Michaelmas term*, to the several sheriffs for the time being, of the several counties herein after mentioned, the several and respective sums herein after expressed, to enable them respectively to bear the expences of the respective letters patent for their offices, and to pass their respective accounts, and to obtain their respective *quietus's*: the said yearly sums to be received without any accompt or imprest what-
 soever

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never to be set upon them, or any of them, and without paying any fees or charges for the same, or any part thereof; that is to say,

To the sheriff of

	l.	s.		l.	s.
Bedford, -	93	6	Ruland, -	69	11
Berks, -	96	0	Salop, -	98	3
Bucks, -	96	0	Somerset, -	112	19
Cambridge and } Huntingdon, }	95	10	Southampton, -	101	3
Chester, -	62	5	Stafford, -	95	10
Cornwall, -	102	16	Suffolk, -	102	12
Cumberland, -	90	2	Surry, -	90	2
Derby -	93	19	Sussex, -	90	5
Devon, -	106	9	Warwick, -	93	10
Dorset, -	101	6	Wilts, -	104	10
Essex, -	108	10	Worcester, -	98	3
Gloucester -	98	10	York, -	150	0
Hereford, -	94	6	Anglesey, -	30	0
Hertford, -	93	0	Brecon, -	30	0
Kent, -	108	10	Cardigan, -	30	0
Lancaster, -	67	7	Carmarthen, -	30	0
Leicester, -	94	6	Carnarvon, -	30	0
Lincoln, -	101	3	Denbigh, -	30	0
Middlesex, -	119	3	Flint, -	30	0
Monmouth -	89	3	Glamorgan, -	30	0
Norfolk, -	101	15	Merioneth, -	30	0
Northampton, -	96	0	Montgomery, -	30	0
Northumberland, -	91	0	Pembroke -	30	0
Nottingham, -	95	13	Radnor, -	30	0
Oxon, -	97	7	Westmorland, -	40	6

“ That when any sheriff or sheriffs within
 “ *England or Wales*, upon passing their ac-
 “ compts, shall have their *quietus est*, that then
 “ such sheriff and sheriffs, their heirs, executors
 “ and administrators, lands, tenements, goods and
 “ chattels, shall be thereby absolutely discharged
 “ of all manner of sums of money by them levied
 “ and received, notwithstanding any such pre-
 “ tence, that the same were not accounted for, or
 “ other pretence whatsoever, unless such sheriff be
 “ called

A *quietus est* to be a sufficient discharge to the sheriff, if not questioned within four years after grant thereof.

“ called in question, and judgment given against
 “ him or them for the same within four years af-
 “ ter such account or *quietus est*; and every offi-
 “ cer or minister by whom, or by whose default
 “ any process shall be sent out contrary to this
 “ statute, 21 Jac. 1. c. 5. shall forfeit 40 l. to the
 “ party grieved, with costs to be recovered by action
 “ of debt, &c.

F E E S O F S H E R I F F.

London and Middlesex.

Sheriffs of Lon-
 don and Middle-
 sex, being at
 greater expences
 in passing their
 office than the
 sheriff of any
 other county,
 oblige their un-
 der-sheriff of
 Middlesex out of
 fees to advance
 all rewards, &c.

In consideration
 all fees granted
 to the under-
 sheriff.

THE sheriff of *Middlesex*, who are also sheriffs of *London*, is nominated by the citizens thereof; and are, as sheriffs of *London*, at much greater expence in passing through their office, than the sheriff of any other county in *England*; and therefore oblige their under-sheriff of *Middlesex*, out of the fees and profits arising from that office, to advance money from time to time to pay all rewards, payable by the said sheriff, for apprehending highwaymen and other malefactors, which are given by several acts of parliament, and to pay the wages of the justices of peace attending at the several sessions of the peace for the said county of *Middlesex*, and to bear part of the expence of the entertainments at the sessions of gaol delivery, held in the *Old Bailey, London*, for the county of *Middlesex*, which, together with other charges incident to the said office, amounts annually to the sum of 450 l. For the dispatch of the business of the county, he keeps his office in *Took's-court, Castle-yard, Holborn*, wherein, besides his own attendance, three clerks are daily employed, (*Sundays and holidays excepted*) they have no salary nor wages, but the allowance hereafter mentioned, out of the fees. And in consideration of his giving security to the said sheriff, in the sum of 12,000 l. to indemnify him from all damages and losses that may happen from the mistake, omission, or misde-
 meanor

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	Sheriff.	Clerk.	Total.
	£. s. d.	£. s. d.	£. s. d.
To the charge of passing the sheriffs accounts for <i>Middlesex</i> , in the exchequer, by stat. 3 Geo. 2	119	3	0
Of every bailiff, when admitted into his office, in lieu of all fees due to the sheriff on arrests that may come to his hands, except fees on execution (commonly called poundage)	6	10	0
Of every bailiff for his indenture of covenants, and bond to perform the same, and attending the execution thereof -		1	1 6
For every warrant on a bill of <i>Middlesex</i> , <i>capias</i> , or <i>quo minus</i> ———	0	0	4
For every name more than one -		0	0 4
For every warrant on a special <i>capias</i> -	0	0	4 0 2 0 0 2 4
For every warrant on a writ of <i>scire facias</i> , extent, <i>elegit</i> ,			

Patent and Accompts:

	Sheriff.			Clerk.			Total.		
	£.	s.	d.	£.	s.	d.	£.	s.	d.
summons against pri- vileged persons, ori- ginal in real or perso- nal actions, <i>pone</i> , <i>ven' facias</i> out of the <i>exchequer</i> , attachment for the peace out of the crown office, <i>di-</i> <i>stringas</i> , writ of pos- session, <i>capias excom-</i> <i>municatum</i> , <i>ne exeat</i> <i>regno</i> , <i>supplicavit</i> , and <i>si laicus</i> —							0	2	4
For taking securi- ty on a writ of <i>ne</i> <i>exeat regno</i> , searching the office, and super- sedeas to set the de- fendant at liberty -				1	1	0			
For taking securi- ty on a writ of <i>sup-</i> <i>plicavit</i> , which rare- ly happens, search- ing the office, and for a <i>superseas</i> to set the defendant at li- berty - - -				0	10	6			
£. s. d.									
For the assignment of every bail bond 0 2 4	0	2	4						
For the plaintiffs discharge for the same - 0 2 4	0	2	4				0	5	0

For

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	Sheriff.			Clerk.			Total.		
	£.	s.	d.	£.	s.	d.	£.	s.	d.
per to deliver the de- fendant to the bai- liff —				0	2	4			
For executing a writ of enquiry of damages, and return of the inquisition thereon	0	10	00	0	3	4			
	£. s. d.								
To the bailiff for summon- ing and swearing the jury -	0	4	0						
For the use of the courthouse or room where the writ is ex- ecuted —	0	1	0				1	10	4
To the jurors, each 1s.	0	12	0						
	0 17 0								
For swearing each witness				0	0	4			
For taking an in- quisition on a <i>capias</i> <i>utlagatum</i> , schedule of the goods seized, and return thereof				0	18	6			
To the bailiff for summon-									

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	Sheriff.			Clerk.			Total.		
	£.	s.	d.	£.	s.	d.	£.	s.	d.
ing the ju- ry —	0	4	0						
To the use of the room, where the inquisition is taken	0	1	0				0	17	0
To the jurymen, each 1s.	0	12	0						
	0	17	0						
If more than one finding, for every other —				0	3	4			
The like on ex- tents —				0	18	6			
For every finding, if more than one, each —				0	3	4			
Attending each adjournment —				0	10	0			
For every sum- mons for a witness to give evidence —				0	2	0			
For taking an in- quisition on a <i>scire feri</i> inquiry, inquisi- tion, and return thereof —	0	10	0	0	8	6	0	18	6
For a <i>nulla bona</i> —				0	1	0			
If by the bailiff of a liberty —				0	2	0			
For special returns such as <i>rescue</i> , defen-									

dant

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	Sheriff.	Clerk.	Total.
	£. s. d.	£. s. d.	£. s. d.
dant discharged by <i>superfedeas</i> or com- mitted to the <i>Fleet</i> , or <i>king's - bench</i> prison, on a writ of <i>habeas-</i> <i>corpus</i> ———		0 2 4	
For the return of <i>seire facias</i> ; each name ———		0 2 0	
For the return of <i>nihil</i> , or <i>mortuus</i> on a <i>seire facias</i> ———		0 1 0	
For the return of an escape warrant —		0 2 0	
For the return of a <i>venire facias</i> , sum- mons against privi- leged persons or <i>ori-</i> <i>ginal</i> , that the de- fendant is summon- ed ———		0 2 0	
For a return of <i>nihil</i> therein ———		0 1 0	
For the return of <i>non inventus</i> on an at- tachment out of the courts of chancery, exchequer, or dutchy of <i>Lancaster</i> —		0 1 0	
For the return of <i>non invent.</i> on a pro- clamation out of the courts of chancery, exchequer, or dutchy of <i>Lancaster</i> ———		0 2 0	
For the allowance of every writ of <i>su-</i> <i>persedeas</i> , or <i>restitu-</i> <i>tion</i> ———	0 2 0	0 0 4	0 2 4
			For

	Sheriff.	Clerk.	Total.
	£. s. d.	£. s. d.	£. s. d.
For a warrant thereon to discharge the defendant's body or goods out of custody ———		0 2 4	
For a return of a writ of <i>venire facias juratores</i> , with the panel of 48 freeholders names thereto annexed ———		0 2 0	
For the return of a writ of <i>distringas</i> , or <i>habeas corpora</i> , with a panel ———		0 12 0	

N. B. The sheriff makes up a panel of 48 *jurymen* for each court in *Westminster Hall*, every term, but before he can do that, by his officer, he enquires after a competent number of persons names, taken out of the freeholders book for that purpose, makes out a warrant to his bailiff to summon them, delivers a panel to the marshal of each chief justice, or chief baron, attends the court by himself, or deputy, during each sessions of *nisi prius*, and after term, enters the names of each jurymen in an alphabetical register, and gives certificates to each jurymen of his attendance, (if required); for all which no fee is claimed or taken.

	Sheriff.	Clerk.	Total.
	£. s. d.	£. s. d.	£. s. d.
Attending the master of the king's bench office, prothonotary of the court of <i>common pleas</i> , or the			
E c			court

Patent and Accompts.

	Sheriff.			Clerk.			Total.		
	£.	s.	d.	£.	s.	d.	£.	s.	d.
court of exchequer for a special jury -	2	2	0						
For attending with the jury on a view, and certifying to the court that the view has been had, the same fee as is paid to each juryman —	1	1	0						
9. For attending eve- ry trial at bar, or at <i>nisi prius</i> , where a spe- cial jury is summon- ed —	1	1	0						

N. B. The last mentioned fee is taken by the under-sheriff or clerk who attends the trial.

	Sheriff.			Clerk.			Total.		
	£.	s.	d.	£.	s.	d.	£.	s.	d.
For every warrant to a bailiff to summon a special jury —				0	2	4			

N. B. The sheriff summonses, impanels, and returns 8 grand juries in the year, at the several sessions of the peace at *Hicks's Hall*, and attends by his deputy during all the time of the sessions there; and also returns 8 juries in the year at the several sessions at the *Old Bailey*, besides party juries, and juries of matrons; and attendants there, without any other fee or reward whatsoever.

	Sheriff.			Clerk.			Total.		
	£.	s.	d.	£.	s.	d.	£.	s.	d.
For a bill of sale of goods on a <i>feri fa-</i> <i>cias</i> , and an inven- tory thereunto an- nexed —				0	9	0			

For

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	Sheriff.	Clerk.	Total.
	£. s. d.	£. s. d.	£. s. d.
For a bill of sale of a term of years —		0 13 4	
The like on a <i>ven-</i> <i>ditioni exponas</i> —		0 13 4	
For allowing a writ in <i>non ponend' in</i> <i>offis'</i> —		0 13 4	
For charging a defendant in custody with every other writ, than that on which he is arrested —		0 2 4	
For a certificate in order for a <i>superse-</i> <i>deas</i> —		0 2 4	
For a certificate that the defendant is in execution, in or- der for his discharge by the late act of parliament —		0 2 4	
For his discharge by the rule of court thereon —		0 2 4	
For attending with writs and other things out of the of- fice, to be produced on trial, for each day's attendance —		0 10 6	
For the plaintiff's discharge on every writ of <i>fieri facias</i> , whereon money has been levied, or on a <i>capias ad satisfaciend'</i> executed on the de- fendant and on every writ on which the			

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	Sheriff.			Clerk.			Total.		
	£.	s.	d.	£.	s.	d.	£.	s.	d.
defendant is committed to the gaol.				0	2	4			
For searching the books and files and a warrant to the keeper of <i>Newgate</i> to discharge the defendant out of custody —				0	2	0			

N. B. The defendants are oftner discharged out of *Newgate* without paying any fees thanwith.

Copies of writs are given, and searches are made for prisoners in *Newgate*, without any fees for the same.

	Sheriff.			Clerk.			Total.		
	£.	s.	d.	£.	s.	d.	£.	s.	d.
For every search				0	0	4			
For a short copy of a writ, in order to put in bail by —				0	0	4			
For searching for a writ in force which is never done but upon the undertaking of some attorney, to put in bail thereto —				0	1	0			
For a copy of all writs, or other things for every sheet of copy wrote —				0	0	6			
For a copy of a bill of <i>Middlesex</i> , <i>capias</i> , or <i>quo minus</i> , at length —				0	1	0			
For executing and returning a writ of false judgment, or <i>accedas ad cur</i> ? —				0	6	8			

Fees

Fees for executing a writ of *ad quod damnum* cannot well be settled, but must be left to the sheriff and the party, to be adjusted between them, because the inquisition on this writ is always taken on the place where the highway to be inclosed lies; or where the intended fair or market is to be held, which may occasion the sheriff's travelling a considerable journey.

Fees for executing a writ of partition cannot well be settled for the same reason; and a provision is made by statute 8 & 9 W. 3. c. 31. for settling the same in case the sheriffs and the parties cannot agree.

	Sheriff.			Clerk.			Total.		
	£.	s.	d.	£.	s.	d.	£.	s.	d.
For attending the lord mayor, as conservator of the river <i>Thames</i> , making warrants on the writs of <i>capias</i> , and summons, and returning the same, and for summoning, impannelling and returning the grand jury at the first court in every year, the water bailiff pays —				1	1	0			
For attending the lord mayor at the second court in every year, and returning the summons and <i>capias</i> process, the water bailiff pays —				0	10	6			
For summoning, impannelling, and returning the traverse jury, and attending									

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	Sheriff.			Clerk.			Total.		
	£.	s.	d.	£.	s.	d.	£.	s.	d.
the trials there, which very rarely happens					0	10	6		
For returning, sum- moning and impan- nelling a jury, and attending commis- sioners in a commis- sion out of the ex- chequer to find debts					0	10			
For the like on a forcible entry before two juries, which happens but very seldom					0	10	0		
For a warrant on a precept for two jus- tices to remove the force after inquisi- tion taken					0	2	4		

Customs and Excise.

Sheriffs, mayors,
&c. on request in
writing of a
known solicitor
for the customs
or excise, to
grant a special
warrant for ap-
prehending of-
fenders, on writs
of *capias*, &c.

BY stat. 9 *Geo. 2. c. 35*, reciting, that whereas it hath been found by experience, that the bailiffs and other officers, having the execution of process in the several counties, cities and liberties of this kingdom, often hold correspondence with the persons guilty of the several illegal practices therein mentioned, and give them notice when any writ or process issues against them, whereby they escape from justice: For remedy thereof, be it enacted, That from and after the 24th day of *June* 1736, where any writ of *capias* or other process shall issue out of any court, directed to any sheriff, mayor, bailiff, or other person having the execution of any process in any county, city or liberty, against any person who shall be guilty of, or prosecuted for any

any offence whatsoever, contrary to any of the laws or statutes now in being, relating to his majesty's revenues of customs or excise, every such sheriff, mayor, or bailiff, and other persons having execution of process as aforesaid, and their and every of their under-sheriffs, &c. and other persons acting for them in the said office and offices respectively, shall, and are hereby enjoined and required, upon the request or application of any one of the known solicitors for the customs or excise, (such request to be in writing indorsed upon the back of the said process, and signed by such solicitor, with his name and addition of *solicitor for the customs or excise*, as the case shall happen to be) to grant a special warrant or warrants, to such person or persons as shall be named to them by such solicitor, for the apprehending such offender and offenders, or in default thereof, every such sheriff, mayor, bailiff, under-sheriff, and other person acting in the said office or offices respectively, shall be subject and liable to such process of contempt, fines, amerciaments, penalties and forfeitures, as they or any of them, are now by any law, custom or usage, liable to, in case of refusing or neglecting to execute the like process, where the defendant might have been taken thereupon, in the common and usual method of proceeding.

That all and every such sheriff, mayor, bailiff, under-sheriff, and other persons so granting or making out such special warrant as aforesaid, shall be, and they are hereby saved harmless and indemnified against his majesty, his heirs, and successors, and against all and every other person and persons whatsoever, of and from all escapes of any person or persons, who shall, or may be taken by virtue of any such warrants as aforesaid, which shall, or may happen from the time of the taking such offender or offenders, till he, she, or they shall be committed to the proper gaol or prison, or offered or rendered to the gaol-keeper, or other person having charge of such gaol or prison (who

Sheriffs, mayors, &c. granting such special warrants, saved harmless.

is hereby enjoined and required to receive every such person or persons so apprehended as aforesaid, and give a receipt for his and their body and bodies) and of, and from all actions, prosecutions, process of contempt, and other proceedings whatsoever, for, or by reason of any such escape; any law, custom or usage, to the contrary thereof, in any wise notwithstanding. *f. 33.*

Poundage, cases where sheriffs, &c. are declared not intitled to poundage, by virtue of 29 Eliz. c. 4.

By the stat. 7 *Geo. 3. c. 29.* it is enacted, That the stat. 29 *Eliz. c. 4.* with respect to poundage on executions, shall not extend to allow any sheriff, under-sheriff, or other person whatsoever, employed in the execution of process, any poundage for taking the body of any person in execution upon any process, at the suit of any sheriff, or other officer or minister of the crown, upon any bail bond entered into for the appearance of any person prosecuted, either for any duties due or payable to his majesty, his heirs or successors, or for any penalty inflicted by any act of parliament, made, or to be made for the preventing the clandestine running or receiving any customable or prohibited goods; or in any case whatsoever, where the sheriff or officer executing such process would not be intitled to poundage, if the proceedings were, or had been carried on directly in the name of the crown.

False Return.

Sheriff, though protected in doing execution, yet if he delay or return falsely, liable to make satisfaction.

I Have in the outset of this work said, that the sheriff is an officer who ought to be favoured in law, before any private person, and of course ought to be protected by the courts of justice in doing his duty. But if he is guilty of unreasonable delay, or making an untrue return of his writ to the court from whence it issued, he is no farther protected, but must make a recompence to the party injured, in an action on the case.

To

To proceed regularly on this head, I shall first state the statute 13 *Ed. 1. c. 39.* which recites, that forasmuch as justices, to whose office it belongeth to minister justice to all that sue before them, are many times disturbed in due execution of their office, for that sheriffs do not return writs original and judicial; and also, for that they make false returns unto the king's writs: Our lord the king, hath provided and ordained, That such as do fear the malice of sheriffs, shall deliver their writs original and judicial in the open county, or in the county where the collection of the king's money is; and may take of the sheriff or under-sheriff, being present, a bill, wherein the names of the demandants and tenants mentioned in the writ shall be contained; and at the request of him that delivered the writ, the seal of the sheriff or under-sheriff shall be put to the bill for a testimony, and mention shall be made of the day of the deliverance of the writ. And if the sheriff or under-sheriff will not put his seal to the bill, the witness of knights and other credible persons being in presence shall be taken, that put their seals to such bill. And if the sheriff will not return writs delivered unto him, and complaint thereof be made to the justices, a writ judicial shall go unto the justices assigned to take assizes, that they shall inquire by such as were present at the deliverance of the writ to the sheriff, if they knew of the deliverance, and an inquest shall be returned. And if it be found by the inquest, that the writ was delivered to him, damages shall be awarded to the plaintiff or demandant; having respect to the quality and quantity of the action, and to the peril that might have come to him by reason of the delay that he sustained: And by this means there shall be remedy when the sheriff returneth that he came too late, whereby he could not execute the king's commandment. Oftentimes also pleas be delayed, by reason that the sheriff returneth that he hath commanded the bailiffs of some

How writs shall be delivered to sheriffs to be executed.

St. 2 *Ed. 3. 5.*

Regist. f. 86.

Rast. pl. fo. 582.

626.

3 *Buldr. 200.*

2 *Inst. 400.*

1 *Roll. 440.*

4 *Co. 65. b.*

2 *Inst. 451.*

29 *Ass. pl. 58.*

St. 51 *H. 3. 3.*

St. 3 *Ed. 1. 17.*

V. N. B. f. 43.

The sheriff returneth a liberty where none is.

2 *Inst. 452.*

Non omittas
propter aliquam
libertatem.

V. N. B. f. 43.

F. N. B. f. 68. F.

74. A.

Regist. f. 82.

Rast. pla. f. 439.

2 Inst. 453.

The sheriff's
default in re-
turning of issues.

V. N. B. f. 43.

Rast. pl. fo. 383.

1 Roll. 336.

2 Inst. 453.

liberty which did nothing therein, and nameth liberties that never had the return of writs; whereupon our lord the king hath ordained, That the treasurer and barons of the exchequer shall deliver to the justices in a roll, all the liberties in all shires that have return of writs. And if the sheriff answer, that he hath made return to a bailiff of another liberty than is contained in the said roll, the sheriff shall be forthwith punished as a disheritor of our lord the king and his crown. And, if peradventure he return, that he hath delivered the writ to a bailiff of some liberty, that indeed hath return, the sheriff shall be commanded, that he will not spare for the aforesaid liberty, but shall execute the king's precept; and that he do the bailiffs to wit, to whom he returned the writ, that they be ready at a day contained in the writ, to answer why they did not execute the king's precept. And if they come at the day, and acquit themselves, that no return was made to them, the sheriff shall be forthwith condemned to the lord of the same liberty, and likewise to the party grieved by the delay, for to render damages. And if the bailiffs come not in at the day, or do come, and do not acquit themselves in manner aforesaid, in every judicial writ, so long as the plea hangeth, the sheriff shall be commanded, that he shall not spare the liberty, &c. Many times also, sheriffs make false returns as touching these articles, *quod de exitibus*, &c. returning sometime, and lying, that there be no issues, sometime that there are small issues, when they may return great, and sometime do make mention of no issues: Wherefore, it is ordained and agreed, That if the plaintiff demand hearing of the sheriff's return, it shall be granted him: And if he offer to aver, that the sheriff might have returned greater issues unto the king, he shall have a writ judicial unto the justices assigned to take assizes, that they shall inquire in presence of the sheriff (if he will be there) of what and how great issues the sheriff might have made

made return from the day of the writ purchased, unto the day contained in the writ. And when the inquest is returned, if he have not afore answered for the whole, he shall be charged with overplus by extreats of the justices delivered at the exchequer, and nevertheless, shall be grievously amerced for the concealment. And let the sheriff know, that rents, corn in the grange, and all moveables, (except horse, harness, and household-stuff) be contained within the name of issues. And the king hath commanded, That sheriffs shall be punished by the justices once or twice, (if need be) for such false returns. And if they offend the third time, none shall have to do therewith but the king. They make also many times false answers, returning that they could not execute the king's precept, for the resistance of some great man: Wherefore, let the sheriffs beware from henceforth; for such manner of answers redound much to the dishonour of the king. And as soon as his bailiffs do testify, that they found such resistance, forthwith all things set apart, (taking with him the power of the shire) he shall go in proper person to do execution: And if he find his under-bailiffs false, he shall punish them by imprisonment, so that others by their example may be reformed. And if he do find them true, he shall punish the resisters by imprisonment, from whence they shall not be delivered without the king's special commandment. And if percase the sheriff, when he cometh, do find resistance, he shall certify to the court the names of the resisters, aiders, consenters, commanders, and favourers, and by a writ judicial, they shall be attached by their bodies to appear at the king's court: And if they be convict of such resistance, they shall be punished at the king's pleasure; neither shall any officer of the king's meddle in assigning the punishment, for our lord the king hath reserved it specially to himself, because that resisters have been reputed

What shall be accounted issues.

The sheriff returneth, that there was disturbance of execution of process.
St. 52 H. 3. 3.
St. 3 Ed. 1. 17.
Regist. t. 83.
Fitz. execut.
147.

An indenture shall be made between the sheriff and bailiff of franchise of every return.

3 Bulstr. 73.

Sheriffs and bailiffs shall set their names to their returns.
Bro. Ret. 81.

Case lies for a false return.

If return cepi corpus or languidus, and defendant at large, liable to this action.

puted disturbers of his peace, and of his realm.
St. 28 Ed. 1. 16.

And because it is many times complained in the king's court upon returns, that bailiffs of franchises (having full power to return the king's writs) have delivered to sheriffs, that have been after changed, and otherwise returned into the king's court, to the great damage of some of the parties, and the delay of the right: It is agreed, that of returns which hereafter shall be delivered to the sheriffs by bailiffs of such franchises, an indenture shall be made between the bailiff of the franchise by his proper name, and the sheriff by his proper name. And if any sheriff change the return so delivered to him by indenture, and be thereof convict at the suit of the lord of the franchise, of whom he received the return, if the lord have had any damage, or if his franchise be imblemished, and at the suit of the party that hath sustained loss through that occasion, he shall be punished by the king for his false return, and shall yield unto the lord and to the party double damages. Also it is agreed, that from henceforth sheriffs, and other bailiffs that receive the king's writs returnable in his court, shall put their own names with the returns, so that the court may know of whom they took such returns, if need be. And if any sheriff or other bailiff leave out his name in his returns, he shall be grievously amerced to the king's use. 12 Ed. 2. c. 5.

Therefore if a mayor, bailiff or sheriff make a false return to any writ, an action on the case will lie against them.

If the sheriff returns a *cepi corpus*, and *paratum habeo* or *languidus*, where the defendant is at large, without any bail taken, he is not aided by the statute, but an action lies against him for a false return. 1. Roll. Abr. 807.

But *quære* if he had taken the undertaking of an attorney to put in and perfect bail.

If

If the return upon the face of it be good, but the matter of it false, an action upon the case lies for the party injured, against the persons making such false return, and where the return is made by several, the action may be either joint or several, it being founded upon a tort. *Carth. 171. Bull. nisi prius. 198.*

It appears that this action is given to the plaintiff by the statute 28 E. 1. c. 16. enacting, that if any sheriff shall make a false return of any writ (whereby right is deferred) the offenders shall yield damages to the party grieved.

This action is given by statute 28 Ed. 1. c. 16.

And if the sheriff return *mandavi ballivo libertatis*, where there is no liberty, an action lies. *Kitch. return. 44.* and so if he return too small issues. 19 H. 6. fol. 8.

If he return mand. ball. and no liberty.

The writ was delivered to the under-sheriff by the plaintiff, his creditor being then and there present, and in the sight and company of the high-sheriff, and yet he, and not the under-sheriff returned *non est inventus*; and thereupon the action was brought against him, and held good. For he is the proper officer to the court, and not the under-sheriff; and every neglect or fraud of the under-sheriff, in executing the office, is punishable against the high-sheriff by fine, &c. but he is not to be committed for the act of his under-sheriff. 3 Nels. Abr. 237. 238. pl. 6. 1 Mod. 33. 57. 58.

Writ delivered to the under-sheriff in company of high sheriff, sheriff returned not found, action brought against him.

Upon writ to the sheriff, he first made warrant to the bailiff of the liberty, and after to his own bailiff, who arrested the party, and suffered him to escape; and then the sheriff returned *mandavi ballivo*. Upon affidavit of the fact, the sheriff was ordered to attend. And it was agreed, that an action lay against the sheriff for a false return. 12 Mod. 311. *Steward v. Floyd.*

Writ to sheriff who made warrant to the bailiff of liberty; and after warrant to his own bailiff, then sheriff returned *mandavi ballivo*, action lies for false return.

If the sheriff will return, *liberavi parte*, where he refuses to accept, action will lie against him for a false return. 12 Mod. 361.

Sheriff returns *liberavi parte*, where he refuses to accept, action lies.

The writ of *capias* in *Withernam* is no writ of execution and we can have no action for a false return

Capias in *Withern*, no

execution, and
no action lies for
a false return.

No action lies
for return of
elongat' where
the sheriff can-
not have sight
of the thing.

On arrest, sheriff
took bail and
returned *cepi*,
plaintiff brought
his action for
false return,
adjudged good.

Case lies against
a sheriff, for
making other
return than what
he received.

If sheriff return
the bailiff's an-
swer, which is
untrue, action
lies against the
bailiff.

Justices of assize
may inquire of
returns respect-
ing members of
parliament.

Sheriff imprison-
ed

May traverse.

turn against the sheriff, 1st, because the *elongat'* is grounded upon an inquisition, 2dly, if he cannot replevy the party, he can make no other return. For he is not to take him to falsify the writ. 12 Mod. 444. *Moore v. Watts*.

No action for a false return will lie against the sheriff for returning an *elongat'* in any case where he cannot have sight of the thing, to be replevied, because he can make no other return; but if such an action could, the taking an inquisition would not have prevented it; for it is not a sheriff's taking an inquisition, where it does not lie, will protect him from an action, 12 Mod. 426. *Moore v. Watts*. 2 Salk. 581. S. C.

Upon an arrest, sheriff took bail and returned *cepi corpus*, plaintiff brought an action for a false return, but adjudged a good return, because by statute 23 H. 6 he is compellable to take bail, and statute has made no alteration of the return. 2 Sid. 28 *Williams v. Tempest, et al.*

An action on the case lies against a sheriff for making other return than is returned to him by a liberty or bailiff of a franchise, who had *retorna brevium*. 1 Roll. Rep. 119.

And if a sheriff return the bailiff's answer, and it's untrue, an action lies against the bailiff, and not against the sheriff. For the sheriff ought to accept the return of the bailiff, and not examine the reality of it (if it be sufficient in law.) 1 Roll. Ab. 98. 99. Cro. Eliz. 512.

By the stat. 11 H. 4. 1. Justices of assize may inquire of returns made to writs of parliament, and if found by inquest, that the return is contrary to the stat. 7 H. 4. 15. the sheriff shall incur 100 l. to the king, and the knight unduly returned, shall lose his wages.

And the sheriff also by the stat. 8 H. 6. 7. shall have a years imprisonment without bail.

But by the stat. 6 H. 6. 4. the sheriff or knight, &c. may traverse such inquest of office, before the justices of assize.

False Return.

431

By the stat. 23 H. 6. 15. If any sheriff make a return contrary to that, or other statute for elections, &c. he shall incur the penalty of the stat. 8 H. 6. 7. and also to pay every person chosen and not duly returned 100 l. to be recovered with costs in debt against the sheriff, his executors or administrators, by the party grieved, if he sue in three months after the beginning of the parliament, or, in his default, by any that will sue.

False return as to elections.

And if any mayor or bailiffs return to the sheriff any not duly chosen, he shall forfeit 40 l. to the king and 40 l. to every person chosen and not returned to be recovered *ut supra*.

If any mayor return to sheriff false.

And if any returned be put out and another put in his place, he that is put in his place, if he take upon himself to be a knight, citizen or burghers, forfeits 100 l. to the king and 100 l. to him put out, to be recovered, &c.

If any returned be put out, and another put in his place.

By the stat. 7 & 8 W. 3. 7. continued by the stat. 12 & 13 W. 3. c. 5. and afterwards by the stat. 12 Ann. 1 Sess. c. 15. made perpetual, a false return is against law, and any making or procuring it, may be sued by the party grieved who shall recover double damages with costs.

Double damages with costs.

All contracts, securities, bonds, &c. to procure a return are void, and he who makes them forfeits 300 l. a third to the king, a third to the poor, and a third to the informer. And a return, contrary to the last determination in the house of commons of the right of election for the same place, is a false return.

All contracts to procure a return void, &c.

By the same statute, the clerk of the crown shall enter the return in a book (which, or a copy of it shall be evidence as much as a record) and the not entering it in *six days*, or if he alter it, but by the order of the house of commons, or give a certificate of any not returned, or wilfully neglect his duty, he shall forfeit 500 l. and his office, and be for ever incapable of it.

Clerk of the crown shall enter the return in a book, &c.

By the same statute any officer who wilfully and falsely returns more persons than he ought, forfeits double

If any officer wilfully and falsely returns more persons, &c.

double damages with costs of suit to the party grieved who may sue the officer or him who procures such return at his election.

House expects return to be made by sheriff according to law.

The house expects the sheriff to make a return according to law, and will not give him directions in case of difficulty; though the mayor to whom the precept was directed dies, and yet the burgesses go to the election, and part return one by one indenture, and the other part return another by another indenture, 9 Jan. 1699.

Debt lies for it.

If a sheriff makes a false return, debt-lies for the 100*l.* upon the stat. 23 H. 6. 15. R. P. 8: Com. 118. 130. *Ast. Ent.* 72. 91.

So case.

So an action upon the case lies for a false return, after a determination for him in parliament. *Lut.* 89. *Sal.* 502. *vide Sal.* 505.

Or after the determination there becomes impossible: as, if the parliament be dissolved. *Semb. per Holt.* *Sal.* 503.

It lies on stat.

So an action lies upon the stat. 7 & 8 W. 3. 7. for a false return. *Lut.* 185.

If the plaintiff makes his case pursuant to the statute. *Sal.* 504.

But does not lie, if it be not founded on some statute.

But an action does not lie for a false return, if it be not founded on some statute, for it is a matter only cognizable in parliament. *Sal.* 505.

Does not lie before determination of the house.

And therefore an action on the case does not lie before the determination of parliament. *Lut.* 89. *Per Holt.* *Sal.* 503.

Nor after.

Nor after a determination, by him against whom the determination there was. *Lut.* 89. *Sal.* 503.

Nor where conformable to the house.

Nor since the statute 7 & 8 W. 3. 7. where the return was conformable to the house of commons. *Lut.* 189.

Double damages.

Double damages may be recovered for any false return though there is no resolution of the house of commons relating to the right of election to that place. *In Excheq. Cham. Williams Wynne v. Middleton,* H. 19 G. 2. 1 *Wils.* 125.

Will lie for a false or double return.

Action at law will lie for a false or for a double return; for there is *damnum cum injuria* in both cases. *Ibid.* It

False Imprisonment.

IT may be proper to consider the violation of the right of personal liberty. This is effected by the injury of false imprisonment, for which the law has not only decreed a punishment, as a heinous public crime, but has also given a private reparation to the party; as well by removing the actual confinement for the present, as, after it is over, by subjecting the wrong doer to a civil action, on account of the damage sustained by the loss of time and liberty.

False imprisonment.

To constitute the injury, there are two points requisite. 1. *The detention of the person*; and 2. *the unlawfulness of such detention*. Every confinement of the person is an imprisonment, whether it be in a common prison, or in a private house, or in the stocks, or even by forceably detaining one in the public streets. 2 *Inst.* 289. *Finch.* 202. Unlawful, or false imprisonment, consists in such confinement or detention without sufficient authority: which authority may arise either from process from the courts of justice; or from some warrant from a legal officer having power to commit, under his hand and seal, and expressing the cause of such commitment. *Ibid.* 46. It may arise by executing a lawful warrant or process at an unlawful time, as on a *Sunday*, or in a place privileged from arrests, as in the verge of the king's court.

To constitute the injury there are 2 points requisite. Every confinement of the person is an imprisonment.

What unlawful, or false imprisonment consists of.

If a man be arrested under a process which was irregularly issued, this is a false imprisonment in the party at whose suit it was issued; for it was incumbent on him, to take care that the process was regularly issued. 2 *Jon.* 214. 1 *Ventr.* 220. *Str.* 509.

May arise by executing a lawful warrant, &c.

If arrest by an irregular process, false imprisonment in the party.

But if a man be arrested under a process which was erroneously issued, this is not a false imprisonment; because the issuing thereof was owing to the mistake of an officer of the court, and not to

But if erroneously issued not.

Officer not liable tho' irregular process.

the fault or neglect of the party at whose suit it was issued. *Str.* 509. *Phillips and Biron.*

The officer is not in this case liable to an action of trespass; for that it would be hard to punish a man, who has done nothing more than obey the process of a court, to which he owed obedience. *Cro. Jac.* 3. 2 *Leon.* 89. 4 *Leon.* 78. 2. *Mod.* 196. *Str.* 509.

If sheriff make warrant without writ, false imprisonment.

If a sheriff, to whom no writ has been directed for the arresting of *A.* make out a warrant to a bailiff to arrest *A.* and *A.* be thereupon arrested, it is a false imprisonment in the sheriff, and the bailiff, because there is no authority for the arrest. 1 *Jones*, 375.

But if a writ has been directed to a sheriff for arresting *A.* and he makes out a warrant under which *A.* is arrested, before writ delivered, no false imprisonment.

But if a writ has been directed to a sheriff for the arresting of *A.* and he makes out a warrant to a bailiff, under which *A.* is arrested before the writ is delivered to the sheriff, this is no false imprisonment; for the writ is in this case an authority for all that has been done, notwithstanding it was not delivered to the sheriff before the arrest. 2 *Lev.* 19. 3 *Lev.* 93.

Altho' arrest is good, yet warrant not lawful.

Although however the arrest upon such warrant is good, the granting thereof by a sheriff, or his deputy is not lawful. 2 *Wils.* 47.

If *A.* arrested instead of *B.* false imprisonment.

If *A.* be arrested instead of *B.* whom the sheriff had a writ to arrest, this, although *B.* be very much like *A.* in the face, is a false imprisonment; for the sheriff is at his peril to take care, that he do not arrest any person except him against whom the writ issued. *Bro. Off. pl.* 8. 2 *Roll. Abr.* 552. *O. pl.* 5. 1 *Bulst.* 149.

If *A.* tell an officer that his name is *B.* and is arrested, yet false imprisonment.

Nay it has been holden, that if *A.* tell an officer, who has a warrant to arrest *B.* that his name is *B.* and thereupon the officer arrest *A.* this is a false imprisonment: for the sheriff is at his peril to take care, that he do not arrest any person except him against whom the writ issued. *Moor.* 457. *Hardr.* 323. yet it seems he causes himself to be arrested, therefore *quære.*

If

If a special bailiff do not shew his warrant, a fight thereof being demanded at the time of arresting a man, the arrest is a false imprisonment. *Bro. Faux. Impr. pl. 23. 9 Rep. 69.*

If special bailiff do not shew the warrant on demand, false imprisonment.

But if a warrant be directed to two or more jointly or severally, an arrest by any one of these is certainly not a false imprisonment. *1 Inst. 181.*

If warrant to two, and arrest by one, no false imprisonment.

If a stranger assist a bailiff in confining a person, who has been arrested by the bailiff, this is not a false imprisonment. *Bro. Tresp. pl. 402. 2 Roll. Abr. 561. F. pl. 2. Cro. Car. 446.*

If a stranger assist officer.

If a stranger, after a man has been arrested, confine him at the request of the bailiff who arrested him, this is not a false imprisonment. *2 Roll. Abr. 561. F. pl. 2. Cro. Car. 446.*

If stranger confine after arrest made,

If a person against whom an escape warrant has issued, be arrested by the mob, and by them delivered to the sheriff, and the sheriff detain him, this is false imprisonment; for, as he was not arrested by a proper officer, the arrest was illegal. *6 Mod. 154. Rich and Doughty.*

If on escape warrant he be arrested by the mob, and they deliver to the sheriff and he detains, false imprisonment.

An unlawful detaining of a man does, although the first arrest was lawful, amount to a new arrest, and consequently is a false imprisonment. *Cro. Car. 379.*

Unlawful detainer, altho' arrest lawful, amounts to a new arrest and false imprisonment.

If a plaintiff, by an order in writing, direct a sheriff to discharge a man, whom he has arrested by virtue of a *capias* or an *exigent* at the suit of the plaintiff, and the sheriff do afterwards detain the man, this is a false imprisonment. *3 Bulstr. 97. 98. Wythers and Henley. Cro. Car. 379. So after a supersedeas delivered to him. Fitz. N. B. 236. Cro. Jac. 379. 1 Roll. Rep. 141. 3 Bulstr. 97.*

If plaintiff by order direct sheriff to discharge a man on *capias*, &c. he must do it.

So after supersedeas he must discharge.

If the order of a court be to carry a man to a certain prison, the confining him in any other place is a false imprisonment. *Salk. 408. Swynstead and Lyddal. Skin. 664.*

If the order of court is to take to a certain gaol, confining in another, is false imprisonment.

It is in the general true, that an arrest for a criminal cause without an express warrant is a false imprisonment. *2 Inst. 51, 52.*

Arrest without warrant is false imprisonment.

It

This action will not lie against sheriff, &c. for arresting a certificated bankrupt, &c.

What is a justification to an action of false imprisonment, against sheriff or his officers.

If action against the plaintiff.

Enough for sheriff to shew a writ, &c.

Must produce an office copy of the judgment.

An attorney fills up the sheriff's warrant on a *capias ad respond.* after it is signed, sealed and sent to him with a blank, this is bad,

It will not lie against the sheriff or his officer for arresting a certificated bankrupt, a peer, a discharged insolvent or a person who took the advantage of the statute of 20 Geo. 3. c. 64. *Tarlton v. Fisher.* Dougl. 671.

Where an officer and another join in the same justification, if it be not sufficient for the officer, neither is it for the other; and wherever a principal officer justifies an imprisonment under a writ, which he ought to return, (for all mesne process ought to be returned) he must shew that the writ was returned, for he is commanded to return the writ, and shall not be protected by it, unless he shews that he paid a due and full obedience in acting under it; *Salk.* 409. *Freeman v. Blewitt.* Lord Ray. 305. but it is otherwise in the case of a subordinate officer, such as bailiff, for he is only to execute the sheriff's warrant, for it is not in his power to shew the writ. *Cro. Car.* 446. *Str.* 1184. 993. If the action be brought against him who was plaintiff, he cannot justify by virtue of an execution, unless he likewise shew there is a judgment, for the judgment may be reversed, and it ought to be at his peril, that he takes out execution afterwards: But, it is enough for the sheriff to shew a writ, and if any one come in aid of the officer at his request, he may justify as the officer may do, but such request is traversable. *Salk.* 409. *Bull. Nisi Prius.* 23. *Salk.* 409. *Britton v. Cole.*

Upon a *fi. fa.* the sheriff must produce an office copy of the judgment on not guilty. *1 Lord Ray.* 733. on which a *fi. fa.* issued. And so held against sheriff's officers, in trespass on not guilty pleaded. *5 Burr.* 2632.

An attorney fills up the sheriff's warrant on a *capias ad respondendum*, after the under-sheriff had signed and sealed it, who sent it to him with a blank left to put in another officer's name. The warrant sent was directed to *Jordan*, and the attorney put in the present defendant's name, as a special

cial bailiff, who arrested the present plaintiff, and took him to gaol for want of bail.

Now on trespass and false imprisonment being brought, the defendant justified under the sheriff's warrant, and plaintiff replies, and traverses that such warrant was directed to the gaoler *Jordan*, and the present defendant; issue was taken on the traverse, and it was held, that the warrant was bad, and therefore judgment was for the plaintiff. And the court said, we have no doubt, but this practice ought to be condemned; and although we do not punish attornies for it by granting attachments, yet we constantly discharge the party arrested by such warrant out of custody. Such warrant is always held to be illegal. And if *Bursem* the present plaintiff, had killed *Fern* in resisting him, it would not have been murder, because *Fern* had no legal warrant to arrest him. And a parcel of sailors who were tried before Mr *Justice Bathurst*, for killing a bailiff who had such a warrant as the present for arresting one of them, were acquitted of murder. *Bursem v. Fern.* 2 *Wils.* 47. *C. B.*

Trespass.

TRESPASS will lie against the sheriff, if his officer take the goods of *A.* on a *fi. fa.* against those of *B.* *Ackworth v. Kempe.* *Dougl.* 40.

If sheriff take the goods of *A.* instead of *B.* trespass lies.

If the bailiff of a franchise take the goods of a stranger in execution, trespass lies against him, and not the sheriff. 2 *Roll.* 552. *l.* 40.

If bailiff takes goods of a stranger, trespass lies against him.

If sheriff takes a furnace, &c. fixed to a freehold, trespass lies, but not against the party, though it is delivered to him. 2 *Roll.* 556. *l.* 50.

If sheriff takes a furnace.

If a sheriff who comes to replevy the beast of *J. S.* which is impounded in the close of *J. N.* break down the fences of the close, and enter that way, when he might have went through the gate, trespass lies. 2 *Roll.* *Ab.* 552.

If sheriff in replevy break fences, where there is a gate, trespass lies.

But if threats are used against the sheriff, otherwise.

But if by reason of the threat of *J. N.* the sheriff fear his life will be in danger if he go through the gate, and in consequence of this, he break down the fence of the close, and enter that way, this action does not lie. *Ibid.* 552.

What is not a trespass.

If after a sheriff's officer has entered a house to execute a *fi. fa.* the master of the house lock the door, it is lawful for the sheriff, after a demand to have it opened has been in vain made, to break it open, for the sake of setting the officer at liberty, or completing the execution. *Cro. Jac.* 556.

Officer on foreign attachment ought not to keep the goods an unreasonable time.

On foreign attachment of the goods, the officer cannot legally continue in possession of the defendant's house, or keep the goods therein for a long and unreasonable time; but must remove them to a place of safe custody, else he is a trespasser, *ab initio*. *Read v. Harrison.* 2 *Black. Rep.* 1218.

The sheriff is to make execution of the right thing at his peril, for he is bound to take notice.

In all cases, where the execution of a judgment on which the demand is of a thing certain, if the sheriff do this thing, he is not any disseisor. But where the execution is in the generality, without mentioning of any thing in particular, there the sheriff ought to make execution of the right thing at his own peril, otherwise he shall be a disseisor; for he is bound to take notice of it, and he had not any warrant from the court to make execution of any but the right thing. *Floyd v. Bethel.*

Sheriffs to Return Writs, &c. How Compellable.

Sheriffs tardy in returning writs.

IT appears by the 13 *Ed. 1. c.* 39. and 23 *H. 6. c.* 10. that the sheriffs of the different counties were very tardy in returning to the courts of justice the several writs directed to them in due time, whereby plaintiffs were hindered in proceeding, and justice delayed. To prevent which, the former statute ordained, "that a complaint should be made to the justices, and a writ should go unto them,"

To prevent which, statute made to authorize the judges to enquire.

“ them, to enquire whether such writ was execut-
 “ ed or not; if executed, and not returned, the
 “ demandant should have his damages awarded.”
 By the latter, “ if sheriffs return upon any person
 “ *cepi corpus*, or *reddidit se*, they shall have the
 “ bodies of the said writs.”

If return of *cepi*
 corp. or *reddidit*
se, sheriffs to
 have the bodies.

Delays made.

Notwithstanding these acts, sheriffs, bailiffs of
 liberties, and their deputies, still continued delay-
 ing the return of writs; therefore, the court of
Common Pleas in *Michaelmas* term. 15 *Eliz. f. 7.*
 made a rule, “ That all sheriffs, under-sheriffs,
 “ or sheriff’s deputies, should return all writs and
 “ common procefs delivered into their hands, or
 “ of record, and deliver or send them returned into
 “ court within 8 days next after the return, on
 “ pain of 40s.”

Rule made to re-
 turn writs in 8
 days after return.

And by rule in *K. B.* made in *Easter* term.
 6 *Jac. 1.* it is ordered, “ That every sheriff shall
 “ after term, return into court all writs, and in
 “ default, expect judgment for contempt.”

K. B. return af-
 ter term.

Notwithstanding this, the two courts were ob-
 liged in *Michaelmas* term 1754, to make a rule,
 that if it appear that any officer should wilfully
 delay the execution of any procefs or execution,
 or should take, or require any undue fees for the
 same, or should give notice to the defendant,
 thereby to protract the execution of any procefs or
 writ, or having levied money, should detain it in
 their hands after the time of the return of their
 writs, besides the ordinary course of amerciaments,
 (the contempt or misdemeanor appearing) an at-
 tachment, information, commitment, or fine, to
 be as the case requires; and this as well in the
 case of a late sheriff, or person before mentioned,
 as of them at present in office.

Another rule
 made in both
 courts to prevent
 wilful delay of
 executions, or
 taking undue
 fees.

By a rule in the King’s Bench of *Michaelmas*
 6 *Geo. 2.* and in the *Common Pleas* of 8 *Geo. 1.*
 “ Sheriffs are to return their writs *within 6 days*
 “ *after service* of a rule of-court for that purpose,
 “ and also *to bring in the body* of the defendant, or
 “ liable to an attachment on service of such rule

Rules in *K. B.*
 and *C. P.* to re-
 turn in 6 days.

“ on the sheriff, under-sheriff, or any person having the return of process.”

Six days being too long in town therefore sheriffs ordered in London and Middlesex to return same in 4 days.

Six days on each rule being too long for those actions in town, therefore the court of King's Bench in *Trinity term*, the 6th of *Geo. 3.* and the *C. P.* in *Hilary term*, 7 *Geo. 3.* made a rule, “ that the sheriffs of *London* and *Middlesex* should return their writs in 4 days next after a rule for that purpose served, and also to bring in the body within 4 days next after service of a rule for that purpose.” But with respect to country sheriffs, the rule in each court, remains 6 days to return the writ, and 6 days to bring in the body.

With respect to counties, the two rules remain as before 6 days. Service not to be on agent.

But the service of such rules, is not to be on the agent to the under-sheriff in town, but on the under-sheriff in the country. *Rex. v. Coles. Dougl. 420.*

To file writ in due time.

The sheriff is to file his writ with the *custos breuium*, on the day the rules expires, or on the next day, an attachment will be granted against him for his contempt.

And to save himself, may put in bail.

And in order to save himself, may put in bail for the defendant, (against his consent) on receiving the rule to bring in the body, and justify such bail, so as it is in due time compleated, which will prevent an attachment being issued: And in the *Common Pleas*, he must justify within the time allowed by the second rule, without any exception to the bail being made. *Poole v. Peate. 2 Black. Rep. 1266.*

May render before 1st rule expires in *K. B.*

But in the *K. B.* the sheriff putting in bail before the first rule expired, may render, without justifying, aliter, if after 2d rule comes in.

When sheriff is fixed on a distringas.

If the late sheriff returns *cepi corpus*, and there is a *distringas* in the *K. B.* for to distrain him to bring in the body, such *distringas* need not lay 4 days in the office before the return, so as to fix him; but he will be fixed if no bail be justified in 4 days after it is left in the office; (although such writ is returnable previous to the 4 days expiring.)

In

In the Common Pleas the late sheriff is served with a rule to bring in the body, the same as the present sheriff, so that no *distringas* issues in that court.

The present sheriff, usually pays the money on an attachment being made out to the coroner.

But the late sheriff does not in *K. B.* until a rule is made on the present sheriff to sell the issues returned against the late sheriff, pursuant to the statute 10 Geo. 3. c. 50, on the several writs of *distringas* issued and returned into court by him, who suffers an attachment for not obeying that rule.

In the Common Pleas a writ of *capias* issued returnable on the morrow of All Souls; on the 7th of November, 1783, the late sheriffs of London were ruled to return that writ, the late sheriffs returned *cepi corpus*, and the present sheriffs indorsed on the writ thus; "*This writ as above indorsed was delivered to us the undernamed now sheriffs, by the above named late sheriffs, at the time of their going out of office.*" An attachment on the rule to bring in the body was granted, now upon motion to set it aside, it was alledged, that the rule ought to have been upon the old sheriffs to bring in the body. Upon shewing cause, it was contended, that the new sheriffs having made the indorsement on the writ as before stated, they had made themselves answerable for the body, but the court held, that the indorsement merely shewed how the writ came into the hands of the present sheriffs, and therefore set aside the attachment. *Leigh v. Turner. Trin. 24 Geo. 3. Ser. Grosse for the plaintiff. Ser. Bolton for the sheriffs.*

And the rules ought to keep pace in both courts with the defendant's time; therefore the rule to bring in the body ought not to come in, before such time as the defendant's time for putting in bail expires; otherwise the sheriff would be in a fine predicament, for how is he to recover back on the bond if defendant pleads *comperuit ad diem*.

Rule to bring in body on late sheriff in C. P.

Present sheriff pays money on attachm.

Late sheriff in the K. B. stays.

Attachment set aside for serving the rule to bring in the body on the present sheriff, instead of the late sheriff. Istud brevium.

Rules ought to keep pace with defendant's time.

By

Not liable after
6 months to re-
turn the writ.

A month in law
is a lunar month.

Observation to
the attorneys.

By stat. 20 Geo. 2. c. 37. s. 2. No sheriff shall be liable to be called upon to make a return of any writ or process, unless he be required so to do, *within 6 months after the expiration of his office.* N. B. A month in law is a *lunar month*, or 28 days, unless otherwise expressed. *Dougl. Rep.* 446. And the day on which he goes out of office is reckoned as part of the sixth month.

N. B. It may be here necessary to observe that in travelling through the great variety of cases necessary to compleat this work, I find that there have been many shifts made use of by the sheriffs of different counties to delay the plaintiffs from proceeding in their suits commenced, particularly *country sheriffs*, who often return *mandavi ballivo*, and that they have received no answer from him; to prevent this, I advise the practitioner in future, to sue out a *non omittas in every cause*, which compels the sheriff to give his immediate answer; for having sent to the bailiff of the liberty, you must rule him for the answer, if he has not sent any to the sheriff, which delays at least 8 days in term.

The court of Exchequer grant the same rules to return writs and bring in the body.

Return of Writs.

Return of writs,
belong to the
sheriff.

Subsequent she-
riff.

If king grants
return of writs,
in a precinct,
sheriff remains
officer to the
court.

THE return of all writs and process, belongs to the sheriff within his county. *Skin.* 414. And the king cannot grant to any other to have *retorno brevium* in a county. 2 *Inst.* 452. 1 *Vent.* 406.

A subsequent sheriff may make a return of a writ delivered to his predecessor, for it is not directed to any one by name. 1 *Salk.* 266.

And if the king grants the return of writs in such a precinct to another, the sheriff remains officer to the court, and the grantee is but a bailiff of a franchise, and ought to make return to the sheriff.

sheriff. 1 Roll. 119. But by prescription or the king's grant, a hundred or franchise, may have *retorna brevium* within their precinct. 1 Vent. 405. 1 Roll. 119. So a bishop. 2 Roll. 202. l. 40. So an honour. Hard. 423. So the lord of a manor. *Ibid.*

But by prescription or grant, a hundred may have return of writs within the precinct.

By 13 Geo. 2. c. 11. s. 6. The sheriff at the request and costs of the lord of a franchise, having return of writs, shall appoint a deputy to reside in or near the same, who, on receipt of process, shall issue his warrant to the lord of the franchise, to execute the process.

Sheriff at request of lord having return, shall appoint a deputy to reside near the same franchise, who shall issue his warrant to the lord to execute process.

All process against any person, directed to the sheriff ought to be duly and truly executed, and returned into such courts out of which they were awarded.

All process directed to the sheriff to be executed and returned, &c.

The sheriff (as also the bailiffs of liberties which receive the king's writs returnable in his court) ought to *set their names to their return* (*viz.* their surnames and christian names, Plo. 63. a.) so that the court may know of whom they took such returns, if need be. Vide 12 Ed. 2. c. 5. vide 8 H. 6. Fitz. Return. 8.

Sheriff, &c. ought to set their names to returns.

And if any sheriff or bailiff do leave out his name in his return, they shall be grievously amerced, by force of 12 Ed. 2. And a return without the sheriff's name is void, and an outlawry was reversed for such cause: he is also to insert his title, and name of dignity.

If name left out void.

The returns are to be indorsed on the back of the writ; and if of length, a schedule may be annexed on parchment of such return.

Returns to be indorsed on back of writ.

All returns, although made by the under-sheriff, yet must be in the name of the high-sheriff. 3 Bulstr. 78, and his name must be put thereto, or its void. 1 Bulstr. 73.

Must be made in the name of the high-sheriff.

The sheriff must return true, and not contrary to the record, if he does, he falsifies all his proceedings. Cro. Jac. 223.

Sheriff must return true.

It must not be contrary to the former return. 19 H. 6. 38.

And not contrary to former one.

But he cannot return contrary to his former return on record. 2 *Roll.* 458. l. 25. So it ought not to falsify the writ, for that belongs to the defendant. *Salk.* 581.

Return of old sheriff not to conclude new.

And the return of the old sheriff, shall not conclude the new sheriff. *Dalt.* 516, and ought to be made *before* or *upon* the return named in the writ. *Mod. Caf.* 148. 159. 196. 250. but he need not return it until the *quarto die post.* *Fortesc.* 363.

Ought to answer the point and be certain.

Every return ought to answer the point of the writ, and it is said ought to be certain to every intent, as a declaration ought to be; and the sheriff is bound to take knowledge of the law in making his return; but as the sheriff's return is only to ascertain to the court the truth of the matter, it requires not such *precise certainty*, as is required in pleading. *Vide* 8 *Co.* 127, 128.

If he shew the writ performed.

If he shew the command of the writ performed, it is sufficient. *Salk.* 589. If the return refers to the writ, it is sufficient without repeating the words of it. 2 *Roll. Abr.* 460. l. 2. and surplusage is to be rejected. *Salk.* 589.

To answer the whole.

He ought to answer to the whole command of the writ, and therefore a panel with 9 names, or less than required, is bad. 2. *Roll.* 461. l. 2.

Ought to be made according to precedents.

Returns ought to be made according to the antient course, and according to precedents. *Dalt.* 162, 163. and by the usual words, otherwise they are not good.

Statutes of jeofail aid misreturns.

Statutes aid misreturns, and insufficient returns, but not where there is not any return. *Cro. Car.* 587. *Stat.* 18 *Eliz.* 8 *H.* 6. c. 12.

None but an officer can make return.

None can make a return, but such a person, who at the time of the return remains an officer to the court.

Feigned names for summoners not to be returned.

Officers are not to return feigned names for summoners, but the true ones. *Mod. Rep.* 248. *Searl and Long's case.*

Words of writ in *elegit*, ought to be pursued.

That in returns to *elegit*, or of a writ in nature of an *elegit*, the words of the writ ought to be pursued. *Dalt.* 548.

Returns

Returns are nothing else but the sheriff's answer; touching that which they are commanded to do by the king's writ; and are but to inform the court of the truth of the matter; and yet it seems to be the most difficult thing belonging to the office; for the sheriff must be very careful and circumspect that he make these returns according to law, both for *substance*, and *form*; otherwise he shall not only endanger himself to be amerced, or sued for the same, but also he shall endamage the parties, and may hazard the cause or suit itself: for it is often to be found that judgements have been stayed for defaults apparent in the sheriff's return. *Dalt.* 162.

Returns are nothing but sheriff's answer.

The answer of the sheriff, if *general*, is usually endorsed on the writ itself; but if it be *special*, it is commonly engrossed on a distinct schedule or piece of parchment, and annexed to the body of the writ, at the same time indorsing these words on the writ. The execution of this writ appears in a certain schedule hereto annexed.

Answer, if general is indorsed, if special scheduled.

In every original writ where *summons lies*, the sheriff must first summon or warn the tenant or defendant to appear and answer, &c. and this must be done in the presence of *two real summoners*, which being done, the sheriff must return the writ in this manner, *viz.* if the defendant be sufficient, first he must return the two common pledges for the plaintiff, and then the names of the summoners as follows,

Where summons lies, how sheriff to act.

Pledges to prosecute { John Doe,
and
Richard Roe.

Summoners of the within named I. S. (the defendant) { William Brown,
and
Robert Woolward,

The answer of W. B. Esq. sheriff.

Pledges to prosecute { John Doe,
and
Richard Roe.

The within named I. S. the defendant hath nothing in my bailiwick where or by which I can summon

Nihil in deb.

summon him, nor is he found in the same. The answer of.

Return to an original in case.

If it be on an original in case, then you say, The within named *I. S.* hath not any thing in my bailiwick whereby he can be attached, nor is he found in the same. The answer of.

Nihil against two,

If more defendants than one, then say, the within named *I. S.* and *T. I.* have not, nor hath either of them, any thing in my bailiwick, whereby they or either of them can be attached, nor are they, or is either of them, found in the same.

One not found, the other summoned, -

If summons on one, and the other not summoned, say, the within named *I. S.* hath not any thing in my bailiwick, whereby he can be attached, nor is he found in the same.

Summoners of the within named *T. I.* are

} *John Denn,*
and
} *Richard Fenn.*

The answer of.

Previous to return of original, put pledges.
Mesne process how to be returned.

N. B. Previous to any return on an original, put pledges to prosecute. *John Doe and Richard Roe.*

To mesne process, viz. *capias ad respondendum*, *alias*, and *pluries*, *latitat*, bill of *Middlesex*, &c. the sheriff returns, *taken*, *cepi* or *not found*, *non est inventus*; unless special circumstances arise, such as a *rescue*, or *sick*, therefore I shall set down these returns: but upon a *capias*, *tarde* is no good return, for the manifold mischiefs which may follow thereon: and therefore if such a return be made, the sheriff is to be amerced. 21 H. 6. *Fitz. Ret.* 37. 42. But *tarde* good on an attachment.

Tarde not to be made on a *capias*.

If he return the death of the defendant.

If the sheriff return the death of the defendant, he must further shew, that the coroner had view of the body. *Fitz. Ret.* 107. But I think if he return the death it is sufficient, for the writ abates. *Vide Bro.* 125. In a *precipe quod reddat*, as also on a *sci. fa.* and *ha. corp. cum. causa*, it is a good return, that the tenant or party is dead. *Br. Ret.* 125.

In a *precipe*, also on *sci. fa.* and *ha. corp.* death returned good,

Pledges to prosecute } *John Doe,*
and
} *Richard Roe.*
The

Return of Writs.

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The within named *I. B.* hath not any thing in my bailiwick, whereby he can be attached, or is he found in the same. The answer of.

**Nihil on an ori-
ginal, quare
clausum fregit.**

Pledges, &c. { John Doe,
and
Richard Roe.

Summoners of the within named C. D. are

The like fam-
mon.

R. Browne,
and
I. Armstrong.

The answer of.

I have taken the within named C. D. whose body I have ready.

Return to an attachment copy.

The within named C. D. is not found in my bailiwick. The answer of,

Non est inven-
tus.

By virtue of this writ to me directed, I have caused public proclamation to be made in my bailiwick that the within named *C. D.* be and appear on the day and at the place within written as within I am commanded. And I further certify, that the within named *C. D.* is not found in my bailiwick.

Return to an attachment and proclamation.

The within named *C. D.* is not found in my bailiwick. The answer of.

Non inven. to a
capias, alias and
pluries.

The within named *C. D.* and *E. H.* are not, or is either of them found in my bailiwick. The answer of.

The like as to
two.

I have taken the within named *C. D.* whose body I have ready as within I am commanded.
The answer of.

Cepi corpus.

I have taken the within named C. D. and J. J.
whose bodies I have ready. The answer of.

If the writ be against more defendants than one, and one be taken, and the other not, return the *cepi corpus* as to him, and as to the others say, "and the within named *A. G.* and *I. H.* are not, "nor is either of them, found in my bailiwick."

Return of capi
as to one, and
non inventus as
to the others.

The answer of.

If the defendant resides in a liberty, where there is a proper bailiff or officer for the execution and return of the writ; whereupon the sheriff sends his

**If defendant re-
sides in a liberty.**

his precept directing him to execute it, if it is not done, the sheriff usually makes this return.

Mandavi ballivo.

By virtue of this writ to me directed, I have sent to the bailiff of the liberty of *F.* to take and arrest the within named *C. D.* which said bailiff hath the full return of all writs and process, and the execution of the same, within the liberty aforesaid; so that no execution of this writ can be made by me within the said liberty, which said bailiff hath not as yet given me any answer thereto. The answer of.

If writ is answered.

If he has answered, say, which said bailiff hath answered me thus, "That the within named *C. D.* is not found in his bailiwick; or, that he hath taken the within named *C. D.* whose body he hath ready. The answer of *A. K.* sheriff."

Languidus a good return.

Upon a *capias*, the sheriff returned that the defendant was so sick, that he could not take or carry him out of his house for fear of death; and it was adjudged a good return. *Fitz. Ret.* 105. 122. *Dalt.* 213.

Sick in prison, good.

Upon the *capias*, the sheriff returns *cepi corpus* and that the defendant is sick in prison; this is a good return, if it be true. *Dalt. ibid.*

Return of languidus.

The return of the within writ appears in a schedule hereunto annexed. The answer of *A. P.* sheriff.

By virtue of the writ hereunto annexed to me directed, I did on the day of last, at and in a certain private dwelling-house of one situate at in my bailiwick, take the body of *C. D.* in the said writ named, she the said *C. D.* having been on the day of aforesaid brought to bed of a child, and then being so very ill, weak, and diseased therewith, that I could not remove her from and out of the room in which she was then lying so ill, weak and diseased as aforesaid, without the greatest danger and peril of her life, and the said *C. D.* having but one small room in the said house in which she lay so ill, weak, and diseased as aforesaid, I could not keep her in my custody

By virtue of this writ to me directed, I have taken the within named *C. D.* who remains in the prison of the lord the king of *Newgate*, under my custody, so ill and weak, that I cannot have his body before the lord the king at the day and place within contained, as I am within commanded, without the greatest danger and peril of his life. The answer of.

In consideration that the sheriff of hath this day, at my request, granted upon the within writ, a warrant directed to a special officer; I do hereby agree to indemnify the said sheriff from and against all *escapes, rescues, or rescuers*, of the within named *defendant*, and I do hereby also agree, that the said sheriff shall not be compelled or compellable to make any return of the within writ, without being first sufficiently indemnified by me or the plaintiff for so doing.

By virtue of this writ to me directed, I have taken the within named *C. D.* whose body remains

Return in custody.

G 99

in

Return to a writ
where defendant
went over by a
ha. corp. in the
absence of the
chief justice
committed by
one of the other
judges.
Dalt. 538.

in the prison of our lord the king under my custody. The answer of.

By virtue of this writ unto me directed, I have taken the within named *T. R.* and him in the prison of our lord the king, under my custody did safely keep, until afterwards (that is to say) on the fourth day of *May*, in the 22d year of his present majesty's reign, I received a certain writ of our lord the king of *habeas corpus cum causa*, directing me to have the body of the said *T. R.* before *Alexander Lord Loughborough*, his majesty's chief justice of the common bench, assigned to hold pleas in his majesty's said court, at his chambers, in *Serjeant's Inn, Chancery-lane, London*, immediately after the receipt of the said writ, by virtue and in obedience of the said writ in the absence of the said chief justice, I had the body of the said *T. R.* with the said writ, and the return of the within cause mentioned in a certain schedule to the said writ of *habeas corpus* annexed, before the honourable *Mr. Justice Nares*, one of his majesty's justices assigned to hold pleas in his majesty's said court of the bench, who on the day and year aforesaid, received him of me, and immediately committed him to the prison of our lord the king of the *Fleet*, and altogether discharged and exonerated me from the further custody of the said *T. R.* Therefore I cannot have the body of the said *T. R.* before his majesty's justices at *Westminster*, as within I am commanded. The answer of.

Return defendant a member
of parliament.

I *J. W. G. Esq.* and *W. N. Esq.* sheriff of the county of *Middlesex* humbly certify and return to his majesty's justices at *Westminster*, that at the time and before the coming of his majesty's writ of *capias ad satisfaciendum* to me directed which is hereunto annexed, the parliament of our lord the king, was and from thence hitherto hath been, and still is, sitting at *Westminster* in the county of *Middlesex*, and I further certify and return that *L. C. Esq.* in the said writ named, at the time and before

before the coming of the said writ to me directed, was and from thence hitherto hath been, and still is, a burghers of the house of commons, and during that time did serve as a burghers of the house of commons, for the borough of, &c. Therefore I cannot take the body of the said L. C. and him safely keep, so that I might have his body before his majesty's said justices at the day and place in the said writ mentioned, as by this writ I am commanded. The answer of.

The execution of this writ appears in the schedule hereunto annexed, &c. The answer of A. P. Esq. Sheriff.

Return that the defendant was bankrupt at the time of his arrest, and he produced warrant under the hands and seals of the commissioners, and bailiff discharged him.

I humbly certify and return to our lord the king, that by virtue of the writ hereunto annexed, I did on the coming thereof to me, to wit on the 30th day of *May* last, duly make my warrant thereon under my hand and seal of office, directed to T. K. J. D. and R. D. my bailiffs of the hundred of O. in my county, whereby I commanded them, each and every of them, jointly and severally, that they, or any of them, should take D. S. in the said precept named, if he should be found in my bailiwick, and him safely keep, so that I might have his body before the lord the king at *Westminster* at the return of the said writ, to answer to J. H. in the said writ named, of the plea and to the bill in the said writ mentioned, which warrant I then delivered to the said T. K. my officer, for execution thereof, and I further humbly certify, to our said lord the king, that before the coming of the said writ to me, to wit, on the 26th day of *May*, 1782, a commission of bankrupt, bearing date at *Westminster* on that day, issued under the great seal of *Great Britain*, against the said D. S. directed to J. R. C. R. F. D. J. B. and L. M. commissioners therein named by three of which said commissioners, namely F. D. J. B. and L. M. the said D. S. afterwards, and before the coming of the said writ to me, to wit on the 16th day of *May* last, was duly found and declared a bankrupt,

and as such bankrupt, the said three commissioners then caused notice to be given in writing to the said *D. S.* under their hands, according to the form of the statute in such case made and provided, that such commissioners or the major part of them in the said commission named and authorized (to wit on the 21st day of *May* then instant, and the 1st and 29th of *June* then next, at ten of the clock in the forenoon on each of the said days, at) had caused the said *D. S.* to be duly summoned by writing under the hands of the said three commissioners to be and appear before them, or the major part of the said commissioners in the said commission named, at those times, there to be examined, and to make a full and true discovery and disclosure of his estate and effects according to the directions of the act of parliament then in force concerning bankrupts, particularly the act of parliament passed in the fifth year of his late majesty's reign, "Intituled an act to "prevent the committing of frauds by bankrupts." And I further certify to our said lord the king that the commission of bankruptcy is still in force, and that afterwards, and before the coming of the said precept to me, to wit, on the of *May* last, notice was duly given in the *London Gazette* that such commission had issued out, and the times and place of the said three meetings of the commissioners in the said commission named, or the major part of them, according to the form of the statute in such case made and provided, were inserted therein as herein before mentioned, for the said *D. S.* to appear on the several days before mentioned before the major part of the said commissioners, and that forty-two days from the time of giving the said notice in the *London Gazette* are not yet expired ; and I further certify to our said lord the king, that by virtue of my said warrant, the said *J. K.* my officer did within the said forty-two days, to wit, on the thirtieth day of *May* last, take and arrest the said *D. S.* by his body, (he the
said

said *D. S.* being then and there going to surrender himself to the said commissioners or the major part of them in the said commission named, with intent to keep and detain the said *D. S.* safely, so that I might have his body before the said lord the king at *Westminster* at the return of the said writ, according to the exigency of the said writ; but then the said *D. S.* then and there asserted and declared to my said officer, that he was coming to surrender himself to the said commissioners, or the major part of them in the said commission named, and then and there produced to my said officer the said summons or notice under the hands of the major part of the said commissioners, and made appear to him, that such notice, or summons, was signed by the major part of the said commissioners, and gave him a copy thereof, and demanded from him his discharge from the said arrest for the cause aforesaid, whereupon the said *D. S.* was immediately discharged by my said officer from the said arrest, according to the form of the statute in such case made and provided; and I further certify and return to our said lord the king, that the said *D. S.* was not at any other time found within my bailiwick, therefore I cannot have the body of the said *D. S.* before our said lord the king at the day and place in the said writ mentioned, as by the said writ I am commanded. By the same sheriff.

If the sheriff takes the defendant upon a writ, and he goes out of office before the return, return the *cepi corpus* in the *old sheriff's* name, and add these words to it. This writ, as above indorsed, was delivered to me the undernamed now sheriff, by the above named late sheriff, at the time of his going out of office. The answer of.

If the sheriff goes out of office after defendant taken, how to return writ.

Capias ad Satisfaciendum.

If sheriff takes
body, he must
have it ready.

But take heed
that if he re-
turn cepi that
he hath the bo-
dy.

Return of cepi.

Non est, invent.

If on a *ca. fa.*
execution be done
and plaintiff paid

But if ruled he
must return.

Release on pay-
ment to sheriff,
no good return.

Mandavi ballivo,
who gave no an-
swer.

The bailiff's re-
turn of cepi.

IF the sheriff takes the body of the defendant, he must return the writ, that he hath it ready at the day *Br. Ret.* 107, and it is a good return to say, *he is not found. Liber. intransd.* 109. (a.) But let the sheriff take heed, if herein he return *cepi corpus*, that he hath the body in court at the day; otherwise he is chargeable for the whole debt, by reason it is an escape. *Br. Ret.* 107.

I have taken the within named *C. D.* whose body I have ready. The answer of.

The within named *C. D.* is not found in my bailiwick. The answer of.

If on a *ca. fa.* the execution of it be done by the sheriff, and the plaintiff hath his demand, tho' the sheriff returneth not his writ, it is of no danger to him. *Dalt.* 213. But if he is ruled, I should think he ought to return the fact, that he took the body, and released him, on payment of the debt or damages to the plaintiff. For it is no good return to say *he released the body on payment of the debt*, for by the writ he hath no power to receive the money. *12 Mod.* 230. But payment over to the plaintiff, is, I should think, good; for in that case, the purpose of the writ is answered, tho' without, it is not: because the sheriff may be insolvent, and no benefit arises to the plaintiff by the execution.

By virtue of this writ to me directed, I have sent to the bailiff of the liberty of *F.* to take and arrest the within named *C. D.* which said bailiff hath the full return of all writs and process, and the execution of the same, within the liberty aforesaid; so that no execution of this writ can be made by me within the said liberty, which said bailiff hath not given me any answer thereto.

Or it may be, which said bailiff hath answered me thus, I have taken the within named *C. D.* whose body I have ready.

In this case, the rule must be for the bailiff to bring in the body ; in the other, for the bailiff to return the writ.

If the old sheriff goes out of office, after the execution of the writ, then he returns such writ in his name ; and the new sheriff returns thus : This writ as above indorsed was delivered to me the under-named now sheriff, by the above named late sheriff, at the time of his going out of office. The answer of.

Return by new sheriff, where the old sheriff executed the writ.

This return was held to be proper in a cause of *Leigh gent one, &c. v. Turner, in C. P. Trin. 24 Geo. 3.* For it shews how the writ with the return comes into the present sheriff's hands ; and *Dalt. 549.* hath this return.

Istud brevium held good by C. P.

I have taken the body of the within named *J. D.* and him detained in my custody, until he paid the debt and damages within mentioned, which debt and damages, I paid to the plaintiff within named, and immediately afterwards discharged the said *J. D.* out of my custody. The answer of.

Return of having taken defendant, who paid the money and payment by the sheriff to the plaintiff.

If a writ of execution shall come to the sheriff against a prisoner (in the gaol) who is attainted of felony, the sheriff may return, that the prisoner is attainted, and that therefore he cannot take him in execution : but if the sheriff shall serve the execution upon such a prisoner, and after he get his pardon for the felony, yet if he suffer the prisoner to go at large, the plaintiff at whose suit the execution was, may bring debt for the escape ; for although by the attainder the execution were superseded, yet by the pardon it was revived. *Dalt. 214.*

If execution comes and prisoner attainted, &c. what sheriff may return.

The sheriff as before said, cannot take bail, or return a *rescue* on this writ. *Cro. Car. 240.*

Sheriff cannot take bail, &c.

It is an escape if he take on a *ca. sa.* and let defendant go, although there is a term intervening between the *teste* and return, because being an execution it is not void. But it would be otherwise on *mesne process*, for there the cause is out of court.

Escape if taken on a ca. sa. tho' there is a term intervening between teste and return.

2 Lord Ray. 775. Vide Cro. Eliz. 466. NeElor and Sharpe v. Gennett in point.

Capias utlagatum.

Vide title Bail 129.

May return non est inventus, or cepi corpus; also nihil.

May on this writ imprison an infant.

May return in prison for a debt.

What sheriff and officers may do on this writ.

Goods and profits of land.

Mow, sever, and take corn, grass.

But not meddle with possession of the land.

UPON the *capias utlagatum* the sheriff may return the defendant not found or that he hath taken him; and he may also return that he hath not any lands, goods or chattels on the day he was outlawed, or at any time since.

And it is said, that on this writ if it be against an infant of the age of 14 years, the sheriff may imprison him, and seize his goods. *Dalt.* 215.

Sheriff on this writ may take the *posse comitatus*. *Fitz. Return.* 110. *Dalt.* 217.

The sheriff, it is said, may return that the party is in prison, upon a condemnation for debt. *Lib. Inst.* 336. b. But then he must bring him into court.

The sheriff and his officers on this writ may seize to the king's use all the goods and chattels real and personal, of all such persons as shall be outlawed in any personal action, that they had at the time the outlawry pronounced: And they may take for the king all the profits of the lands in the possession of the party outlawed, they may mow or sever, and take all the corn and grass growing, and take the feed and herbage of the grounds, &c. (as they arise and grow of themselves) and the rents of his farmers, as the party outlawed might: But they may not meddle with the possession of the lands, to plow, sow, grant or let the same, &c. And if the party outlawed shall make a feoffment of his land, the king shall have no more the profits thereof, but the feoffee shall have the same, for that the king hath not any

any possession of the land, altho' he hath the profits thereof. *Br. Her.* 24. 26. & 30. *Br. Issues* 9, 10. *Plow.* 541. b. *Stamf. de Prerog.* 57. b. And yet if the tenant for years be outlawed, the king (or his officers) may seize the land and term, and may plow the same land to sow the corn, and may occupy the same in the same manner as the termor or tenant might. But otherwise it is, when the tenant of a freehold is outlawed; for in such case, the king may cut the grafs, &c. for that it is a thing that is annual (sc. yearly cut or fed) but he may not plow the land, nor cut the underwoods; neither shall the king, or his officers meddle to cut or crop any trees growing upon the freehold. 9 *H. 6. fol.* 21. *Dalt.* 83. But where a woman executrix takes a husband who is outlawed, the goods of the testator shall not be thereby forfeited. 33 *H. 6. Br. Forf.* 71. And so if an executor himself be outlawed, he shall not thereby forfeit the goods of the testator. *Ibidem.*

If tenant of the freehold outlawed.

If woman takes a husband who is outlawed, goods of testator not forfeited.

If a woman covert be outlawed in an action of debt or trespass, the king is not to have her term (or a lease for years which she hath) for that it is in the husband. 9 *H. 6.* 52.

Woman covert be outlawed, king not to have her term.

He that is outlawed in a personal action, shall forfeit such debts as were due to him by simple contract. 4 *Co.* 95. a. *Slade's Case*, so by bond or other specialty. *Br. Forf.* 107. 16 *E. 4.* & 4 *H. 7.* 17.

Outlaw forfeits debts.

No goods lawfully distrained, let or demised, pawned or pledged, shall be taken or seized for outlawry, until the lease be determined, or the rent or other satisfaction be yielded upon the distress, or the money paid for the pawn or pledge. 4 *E. 6. Br. Distrain.* 75. 22 *E. 4.* But goods bailed or delivered me to keep, if the bailor outlawed, these goods may be seized and taken for the king.

Goods distrained let, pawned, &c. not to be seized.

No goods fixed or annexed to the freehold, shall be taken or seized for outlawry; as a furnace, table fixed to the ground with posts, nor wainscot, doors,

What may not be taken.

doors, windows, locks, pales and the like. 20 H. 7. fol. 13. b. & 2 E. 4. fol. 12. Deer in a park, shall not be forfeited by outlawry, in a personal action. 10 H. 7. fo. 7. a.

If body taken. If the sheriff take the body how to proceed. fo. 129. title *Bail*.

Two outlawries. Where there are two outlawries at different times, the first inquisition shall prevail; and where there are two in one day, and both inquisitions on one day, there the first lease shall be preferred. *Parker's Rep.* 112.

Copyhold lands not liable. Copyhold lands are not liable to be seized upon an outlawry, because it would be prejudicial to the lord, nor upon an extent. *Ibid.* 190, 195.

If goods, &c. taken, the sheriff take inquisition. If there are goods taken, or lands, &c. on the writ the sheriff is to take an inquisition thereon, and enquire by a jury what goods, lands or chattels, the party outlawed had the day of the outlawry or at any time after, and return his inquisition so taken into court, and the goods so taken he may keep until he receives a *venditioni exponas*, for the sale thereof. *Dalt.* 214, 215.

The inquisition on a *capias utlagatum*. *Middlesex*, } An inquisition indented taken at to wit. } *Guildhall, Westminster*, in the county aforesaid, on the day of in the 26th year of the reign of our sovereign lord George the third, by the grace of God, of Great Britain, France and Ireland, king, defender of the faith, &c. before me, *W. G. Esq.* and *W. N. Esq.* sheriff of the county aforesaid, by virtue of the king's writ to me directed, which is hereunto annexed on the oath of *A. B. C. D.* (here name the 12 jurors) good and lawful men of my bailiwick, who being sworn and charged to enquire of all and singular the things in the said writ mentioned, and contained, on their oath say, that *C. D.* in the said writ named, on the day of last, on which day he was outlawed, was, and on the day of taking this inquisition, is possessed as of his own proper goods and chattels, of and in two beds, &c. (here set forth the goods and

and chattels taken exactly) and also (here be particular as to describing the *goods*, *debts* due to the outlawed) of and in *bills* and *notes*, or the return will be bad, and how he came by every bill or note of hand, viz. by indorsement, or acceptance, &c. and the parties names indorsed thereon, and also shew, whether the debts seized, are for goods sold, money lent, &c. if you have evidence before you, (but not else.)

The remainder of a certain term of 99 years to come, and unexpired, of and in all that piece or parcel of ground, (here describe the premises as in the lease,) demised by indenture of lease, bearing date the day of 17 and made between &c. at the yearly rent of all and singular which goods, chattels, and premises, are the property of the said *C. D.* and that the said goods and chattels are worth, to be sold, the sum of l. of lawful money of *Great Britain*, which said goods and chattels, I the said sheriff on the day of taking this inquisition, have seized and taken into his majesty's hands, according to the command of the said writ, and the jurors aforesaid, upon their oath aforesaid, further say, that the said *C. D.* on the said day on which he was outlawed, or at any time since, had not, nor on the day of taking this inquisition, hath any lands or tenements, or any other or more goods or chattels in my bailiwick to the knowledge of the said jurors, which can be seized or taken into his majesty's hands by virtue of the said writ. In witness whereof, as well I the said sheriff, as the said jurors aforesaid, to this inquisition have set our seals the day and year first above-mentioned.

The within named *C. D.* is not found in my bailiwick: The residue of the execution of this writ appears in the inquisition hereto annexed. The answer of.

Return to the writ.

Inquisition indented, &c. upon their oath say, that *J. S.* in the said writ named, hath not, nor had he on the day of on which day he

Return of nulla bona.

he was outlawed, any goods or chattels, lands, or tenements, in my bailiwick, to the knowledge of the said jurors, which can be seized or taken into his majesty's hands by virtue of the said writ. In witness, &c.

Return of venditioni exponas.

By virtue of this writ to me directed, I have sold the goods and chattels within mentioned, for the within mentioned sum of *l.* being the dearest price I could get for the same, which monies I have before the barons of the king's exchequer at *Westminster*, at the day within mentioned, ready to be paid to his majesty's use. The answer of.

Vide the charge to the jury on this writ, 170.

To a distringas, super vice com', distrained.

Summoners are

John Denn.

and

Richard Fenn.

Issues 40s.

The answer of *J. A. Esq. sheriff.*

Nihil to a distringas against a member.

The within named *J. S.* hath not any lands or chattels in my bailiwick, where or by which I can distrain him as within I am commanded. The answer of.

Sheriff returned, that he had sent to the bailiff, and he gave no answer, but did not return, nihil therefore amerced.

In debt upon a distringas, the sheriff returned, that he had sent to the bailiff of the liberty, and that he gave no answer, and for that he did not further return, that he had nothing in his bailiwick, he was amerced. *Br. Ret. 23.*

May return tarde, but not against late sheriff.

The sheriff may return to this writ, *tarde*, "but not against the late sheriff," on his return of *cepi*, in that case, he must return issues. *Br. 24.* and not less than 40s.

Ought to distrain reasonably.

Although the words of the *distringas* are, that the sheriff distrain the defendant by all his lands and chattels, yet he ought to distrain him reasonably, and not according to the words of the writ. *Br. 120.*

Usual issues.

The usual issues on the first *distringas*, are 40s. on the second, 4*l.* and so double the sum, except a rule comes to the contrary.

Must return issues, and not distrained.

That in a *distringas*, by all his lands and chattels, so that he have his body, &c. the sheriff must

must return issues upon the defendant, and not distrained. *Br. 24. Dalt. 224.*

The execution of this writ appears in the panel annexed. The answer of. Distringas juratorum.

Middlesex } The names of the jury between *A. B.* to wit. § plaintiff, and *C. D.* defendant, in a plea of debt. Here insert the names of the jury.

There are distringas's against bodies corporate, peers, members, &c. all of which are to have issues returned on them, or *nihil* as before mentioned.

To wit } *T. B.* Esq. sheriff of the county afore- Warrant on a writ of ad quod damnum.
said, to *A. B.* my bailiff, greeting, by virtue of his majesty's writ of *ad quod damnum*, under the great seal of *Great Britain*, to me directed, I command you, that forthwith you summon the several persons hereunder named, that they be and appear before me on the day of at of the clock in the forenoon of the same day, at the house of commonly called or known by the name, or sign of the in in my county, then and there to enquire if it will be to the damage or prejudice of our sovereign lord the king, or of any other, if our said lord the king should grant unto *M. E.* in the said writ named, licence to inclose certain footways, or paths, or passages, in the said writ particularly specified; and all and every such other matters and things as shall be then and there given them in charge. Hereof fail not as you will answer at your peril. Given under the seal of my office the day of in the year, &c.

To wit } *An inquisition* indented, taken at the An inquisition taken on a writ of ad quod damnum.
king's head inn, in the said county, on the day of in the year of the reign of our sovereign lord *George* the third, &c. and in the year, &c. before *J. B.* Esq. sheriff of the said county. By virtue of a writ of our sovereign lord the king to me directed, and to this inquisition annexed, by the oath of *C. M.* &c. who being charged

charged and sworn upon their oath, say, that it will not be to the prejudice or damage of our sovereign lord the king, or of any other, if our said lord the king should grant to *M. E.* in the said writ named, licence to inclose a certain way or road, lying within and under the south walls of the city of *C.* leading from &c. and also, if the said *M. E.* doth hold the said way or road so inclosed, to him the said *M. E.* his heirs and assigns for ever, so that there be and remain, instead of the said way or road, so to be inclosed as afore-said, another way or road as convenient and commodious for travellers and passengers passing through the same. *In witness, &c.*

Extortion.

IT is an abuse of public justice which consists in any officer's unlawfully taking, by colour of his office, from any man, any money, or thing of value, that is not due to him, or more than is due, or before it is due. The punishment is fine and imprisonment, and sometimes a forfeiture of his office. 1 *Haw. P. C.* 170. “No sheriff, or other, the king's ministers, shall take any reward to do his office, but shall be paid of that which they take of the king; and he that doth, shall yield twice as much, and shall be punished at the king's pleasure. 3 *Ed. 1. c.* 26.”

Construction.

Under these words are understood escheators, coroners, bailiffs, gaolers and other inferior officers of the king, whose offices were instituted before the making this act, which do any way concern the administration or execution of justice, or the common good of the subject, or for the king's service. 2 *Inst.* 209.

It is not said that he shall take no reward generally, but no reward to do his office. Therefore a bar fee of twenty-pence taken by the sheriff for every

every prisoner acquitted, as is not against the statute. *Ibid.* 210.

But there seems to be no necessity for this distinction, for it cannot be intended to be the meaning of the statute to restrain the courts of justice, in whose integrity the law always reposes the highest confidence, from allowing reasonable fees, for the labour and attendance of their officers; for the chief danger of oppression is from officers being left at their liberty to set their own rates on their labour, and make their own demands; but there cannot be so much fear of these abuses, while they are restrained to known and stated fees, settled by the discretion of the courts which will not suffer them to be exceeded, without a proper resentment. 1 *Haw.* 171.

Fees allowed,
and why, notwithstanding the
act.

Dower.

BY 31 *El. c. 3.* it is enacted, "That after
" every summons upon the land in any real
" action, fourteen days at the least before the day
" of the return thereof, proclamation of the summons shall be made on a *Sunday* in form aforesaid, at, or near to the most usual door of the churches or chapel of that town or parish, where the land, whereupon the summons was made doth lie, and that proclamation so made as aforesaid, shall be returned together with the names of the summoners; and if such summons shall not be proclaimed and returned, according to the tenor and meaning of this act, then no *grande cape* to be awarded, but an *alias* and *pluries* summons, as the cause shall require, until a summons and proclamation shall be duly made and returned, according to the tenor and meaning of this act." *Sec. 2.*

Every summons on the land, is to be made fourteen days before the return of the writ, and proclamation at the church door on a Sunday.

Upon a writ of dower, the sheriff must first summon the defendant upon the land, and after he is to

What sheriff is to do.

Return of Writs.

to proclaim the summons at the church door of the parish where the land lieth, and it is said, a summons personally on the defendant seems sufficient, without either summons on the land, or proclamation at the church door. *Dalt.* 225.

Pledges to prosecute, { *John Doe,*
and
Richard Roe.

Return to a writ
of dower.

Summoners of the within named *C. D.* are

Richard Mills,
and
John Freer. }

Proclamation
therein.

And at the most usual door of the parish church of *Saint S.* within mentioned, on *Sunday* the day of in the year within written, immediately after divine service and sermon ended, I did cause public proclamation to be made, according to the form of the statute in such case made and provided. The answer of.

Grand cape.

Upon the *grand cape*, the sheriff hath two things in command, the one to take the land in the hands of the king, and the other to summon the tenant, but the first is mere form, and void, and the sheriff ought not to seize the lands into the king's hands by force thereof. *Dalt.* 249. He must summon the tenant to answer to his default, and further, to answer to the demand. *Ibid.*

Return of grand
cape.

By virtue of this writ to me directed, I have by *A. B.* and *E. H.* good and lawful men of my bailiwick, given notice to the within named *C. D.* to be and appear before the king's justices at *Westminster*, at the time and place within mentioned, and as I am within commanded, I have taken into his majesty's hands the land and premises within mentioned, as also I am within commanded. The answer of.

Qu.

Return to a writ
of hab. fac. sei-
finam.

The execution of this writ appears in a certain schedule hereto annexed. The answer of.

By virtue of this writ to me directed, and to this schedule hereto annexed, I humbly certify to the justices of our lord the king of the bench, that

on the 10th day of *June*, in the 22d year of the reign of his present majesty, I have delivered to the within named *P. B.* full *seisin* of the third part of the messuages, lands and premises, with the appurtenances in the said writ specified, (that is to say) of two messuages, situate and being in the parish of *A.* in the said county, and in the tenure of *J. B.* and *C. D.* with the appurtenances thereto belonging, and also of two acres of land with the appurtenances, in the parish and county aforesaid, in the possession of, &c. to hold to the said *P. B.* in fealty by metes and bounds, as and in the name of dower of her the said *P. B.* of the indowment of the said *J. P.* her late husband, as by the said writ I am commanded.

If a woman recover in a writ of dower, the sheriff may put her possession or *seisin* by a clod, or by grafs growing upon the land, or by any beast being thereupon, &c. 40 *E.* 3. *Fitz. Dower.* 38.

How to put the demandant in possession.

In a writ of dower, a writ went to the sheriff to deliver the wife ten marks *per annum* in land and rent for her dower, and the sheriff delivered her in land, five marks in yearly value, and five marks in rent, issuing out of the land, whereof she was dowerable, and it was holden a good indowment. *Br. Dower.* 61.

What sheriff may deliver.

In dower of three manors, or three acres, the sheriff may assign to the wife one manor, or one acre for all; and he may assign the whole manor with the adowson; or may assign the third part of each, and the third presentment. 12 *E.* 4. *Br. Dower.* 72. *Plow.* 65, 66.

If there are three manors.

And note, that in dower, the sheriff is to make execution, and put the wife in execution of the third part by metes and bounds, if he can. 3 *Eliz. accord.* & *Co. L.* 34, & 32. and here the sheriff is a judge, and may execute the same himself, and shall not need to do it *per sacramentum* 12, &c. But if the sheriff and the wife shall come together to the land, the sheriff may not make execution by these words, or in this manner, *i. e.* I

Sheriff to put the wife in execution of third part.

H h

deliver

deliver the *seisin* of the third part of the land according to the recovery, for that is not good. *Fitz. scire fac.* 92.

In some cases, the wife cannot have her dower assigned by metes and bounds, as for instance, &c.

In some cases, the wife cannot have her dower assigned by metes and bounds, but must hold her dower *per my et per tout in common*. As of the profits of a mill, or of a wood, which co-partners hold, &c. *Fitz. Avowry.* 9. or of a common of pasture. *Fitz. Ent.* 75. *Affise.* 435. or of an office, or of lands held in common. *Fitz.* 149. and by *Co. L.* 32. she may have a third part of the profits assigned to her.

Inquisition in dower.

Dorsetsh. } AN inquisition indented, taken at to wit. } in the county aforesaid, on the fifth day of May, in the 22d year of the reign of our sovereign lord George the third, &c. and in the year of our Lord 1782, before me N. C. Esq. sheriff of the county aforesaid, by virtue of the writ of our said lord the king to me directed, and to this inquisition annexed, by the oaths of S. C. J. G. (here name the twelve jurors) good and lawful men of my county, who say upon their oaths, that the within named S. A. on the day of 17 died seized in his *demesne* as of fee of and in one messuage, called the *George Inn*, one stable and one close of meadow called, &c. (*naming the several particulars*) situate, lying, and being in in the parish of in the county aforesaid, and of and in 5 *l.* 19 *s.* 4 *d.* issuing from and out of the following messuages in aforesaid, to wit of 10 *s.* rent issuing from and out of a messuage in the tenure of A. R. of 10 *s.* rent, issuing from and out of a messuage in the tenure of J. T. of 10 *s.* rent issuing from and out of a messuage in the tenure of J. H. of 10 *s.* rent, issuing from and out of a messuage in the tenure of R. S. of 10 *s.* rent, issuing from and out of a messuage in the tenure of W. P. of 10 *s.* rent, issuing from and out of a messuage in the tenure of G. R. of 8 *s.* rent, issuing from and out of a messuage in the tenure of J. P. of 6 *s.* rent, issuing from and out of a messuage in the tenure

tenure of *K. D.* of 8 *s.* rent, issuing from and out of a messuage in the tenure of *R. C.* of 1 *l.* rent issuing from and out of a messuage in the tenure of *S. O.* and of and in the reversion of the same messuages after the expiration or sooner determination of certain terms of years thereof respectively granted; and that the said *S.* did not die seized of any other messuages, lands or tenements, to the knowledge of the same jurors. And the jurors aforesaid on their oath further say, that the tenements and premises above-named, with the appurtenances, are of the clear yearly value, in all issues beyond reprises, of 60 *l.* 11 *s.* 3 *d.* and that the said *B. S.* Esq. and *M.* his wife, in the writ aforesaid named, have sustained damages by reason of the detention of the dower within specified, from the said day of the issuing of the writ original within mentioned, beyond the value aforesaid, to 10 *l.* 5 *s.* 11 *d.* and for their costs and charges by them about their suit in that behalf expended to 10 *s.* In witness whereof, as well I the said sheriff, as the jurors aforesaid, have to this inquisition interchangeably set our seals, the day, year, and place abovesaid; and I do further humbly certify to the justices of the lord the king at *Westminster*, that by virtue of the writ aforesaid, I did on the day of in the 22d year of the reign of our said lord the now king, &c. cause the said *B.* and *M.* to have full *seisin* of the third part of the tenements and rents aforesaid, with the appurtenances, to wit, of the said messuage, with the appurtenances called the *George Inn*, in the tenure of *A. B.* the said messuage with the appurtenances, &c. of the said 10 *s.* rent, issuing from and out of the said messuage in the tenure of *A. R.* of the said 10 *s.* rent issuing from and out of the said messuage of *J. T.* of the said 10 *s.* rent, issuing from and out of the said messuage in the tenure of *F. S.* of 9 *s.* 9 *d.* rent, parcel of the said 10 *s.* rent, issuing from and out of the said messuage in the tenure of *J. H.* and also of the reversion of the four messuages last mentioned,

Return of Writs.

tioned, after the expiration or sooner determination of the said terms of years thereof respectively granted, with the appurtenances, to hold to the said *B.* and *M.* in severalty by metes and bounds as the dower of the said *Mary*, of the indowment of the said *S. A.* her late husband, as by the writ aforesaid I am commanded.

N. C. Esq. Sheriff.

Return to writ
of right patent.

The summoners of the within named *G. C.* are *James Armstrong* and *David Simpson*.

Pledges to prosecute,

{ *John Doe*,
and
Richard Roe.

And at the most usual door of the parish church of *Saint John, Hackney*, within mentioned, on *Sunday* the 29th day of *December*, in the year within written, immediately after divine service and sermon ended, I did cause public proclamation to be made according to the form of the statute in such case made and provided. The answer of.

Return to the
alias writ of summons.

By virtue of this writ to me directed, I have caused *James Esdaile*, *James Hodges*, *Philip Dyot*, and *George Mercer*, four lawful knights of my county, girt with swords, to be summoned by *Henry Farguson*, and *James Whitaker*, my bailiffs, to be before his majesty's justices, at the day and place within mentioned, to do as by this writ they are required, and as I am within commanded.

The said summoners are and each of them is mainprized by,

John Doe,
and
Richard Roe.

Partition.

Warrant on the
writ of partition.

OXFORDSHIRE *J. A. B.* Esq. Sheriff of the county aforesaid, to *B. L.* and *M. L.* my bailiffs of the hundred of *S.* greeting by virtue of his majesty's writ to me directed, I command you, that if
C. K.

C. K. shall give me security, that their suit shall be prosecuted, then summon *M. C.* that he be before his majesty's justices at *Westminster*, in fifteen days of *Easter*, to shew why the said *C. K.* and *M. C.* hold together and undivided, ten messuages and twenty acres of land, &c. (here set forth the parcels as in the writ) with the appurtenances in the parish of *K.* in the said county, and whereupon the said *C. K.* denies partition thereof to be made between them, according to the form of the statute in such case made and provided, and unjustly permits the same to be done, contrary to the statute. Hereof fail not. Given under my seal of office, &c.

This is to be served on the tenant of the premises if found, if not, the wife, son, or daughter of the tenant, (being twenty-one years old) forty days before the return. 8 & 9 *W. 3. c. 31. sect. 1.*

John Doe,
Pledges to prosecute and
Richard Roe.

Summoners of the within named, *C. K.* and *B. L.* are Return of the writ,

John Sanders,
and
Luke Warden.

The answer of *A. B. Esq.* sheriff.

It is said in 1 *Inst. sect. 248.* That when judgment is given upon the writ, it is thus; "That the partition shall be made between the parties, and that the sheriff in his proper person shall go to the lands and tenements, &c. and that he by the oath of twelve lawful men of his bailiwick, &c. shall make partition between them, and that one part of the lands and tenements shall be assigned to the plaintiff, or to one of the plaintiffs, and another part to another parcener, &c. not making mention of the eldest sister, more than of the youngest." Judgment on the writ of partition.

It appears that there was great inconvenience to the sheriff to attend in person, sometimes on ac-

H h 3 count

If the sheriff cannot attend, under sheriff with two justices may.

In case of disability of sheriff or his under-sheriff, the justices are to attend.

What sheriff is to do.

count of the distance, at other times his health, or some other infirmity, that might prevent him; for which reason an act of parliament was made in the 8th and 9th year of *William* the third, to ease him in his duty, by which it is enacted, "That when the high-sheriff by reason of distance, infirmity, or other hindrance, cannot conveniently be present at the execution of any judgment in partition, the under-sheriff in the presence of two justices of the peace, may proceed to execution by inquisition; and the high-sheriff shall make the same return, as if he were personally present; and the tenants of the lands shall be tenants for such parts, set out severally to the respective owners, under the same rents and reservations; and the owners of the several purparts shall make good unto their respective tenants the said parts severally, as they were bound to do before partition made." *Stat. 4.*

"The sheriffs, their under-sheriffs and deputies, and, in case of disability in the high-sheriff, all justices of peace, shall give due attendance to the executing such writ of partition (unless reasonable cause be shewn to the court upon oath) or otherwise, be liable to pay unto the defendant such costs and damages as shall be awarded by the court, not exceeding 5*l.* for which the defendant may bring his action in any of his majesty's courts at *Westminster*; and in case the defendant doth not agree to pay unto the sheriff or under-sheriffs, justices and jurors, such fees as they shall demand, the court shall award what such person shall receive, having respect to the distance of the place from their habitations, for which they may severally bring their actions." *Stat. 5. made perpetual by 3 & 4 Ann. c. 18.*

On receipt of the writ, the sheriff is to summon a jury of twelve men qualified by the several acts mentioned in 3 *Geo. 2. c. 24.* and to give notice to the parties to attend him, and on the day he

is to go to the land, &c. with the jurors (which ought to be shewn them,) and then shall see the same and the boundaries thereof, then on evidence being given him, he draws up in form an inquisition, which he, and also the jurors are to sign and seal, pursuant to the writ; and the reason why they sign and seal the same is, for the better strengthening of the partition, and that the sheriff should not return what partition he himself thinks proper: when the partition is made and the inquisition signed, &c. he is to return the same to the justices, under his seal and the seal of the twelve jurors, so that they may give their final judgment thereon. *Co. Lit.* 249, 168, *b.* 169.

“ If the fees are not paid to the sheriff, &c. by the demandant, then the court shall award the same, for which the sheriff, &c. may bring their actions severally.” *Stat.* 5.

It is said that the jury ought to be shewn the lands before they make partition; but if not, they must make it to the best of their judgment; for they are compellable to make partition at their peril. *Dyer*, 265, 266.

Upon a partition to be made between tenants in common, where one of them hath purchased lands that lie intermixt and cannot be known, the party which purchased such lands ought to shew the jury the bounds, (or the certainty or number of acres) of his land so purchased, but if neither party will give evidence therein to the jury, yet the sheriff and the jury are to make partition at their perils, as well as they can. *Dalt.* 265.

If there are two manors, the sheriff may assign one manor to one, and the other manor to the other, so that both be of equal value. *Bro. Part.* 29.

So an advowson may be divided between partners, the one to present one turn, and the other, another turn. *Co. Lit.* 32. *Stat.* 7 *Ann.* c. 18. So a rent-charge, *ibid.* but estovers as house-boor, hay-boor, and fishery uncertain, as without number

Ought to be shewn the land, if not, are bound to make partition.

Upon partition between tenants in common, and one purchaseth land which lies intermixt, ought to shew them.

What sheriff may assign.

Advowson.

Rent-charge &c.

ber cannot be divided, *ibid.* The profits of a mill, dove-house, of courts, tithes, and of stallage of a fair may be parted. *Ibid.* 32.

If co. palat. how to make partition.

If a county palatine descend to divers coparceners, and they make partition, every one of them shall have a several county palatine, and the liberties and prerogatives in it. *Dalt.* 61. 16 *Vin.* 224.

How coparceners of a manor are to make partition.
Rents.

So if coparceners of a manor make partition, every one shall have a several manor and court baron. *Dalt.* 61.

If there are three coparceners, and 10 *l.* rent is granted to one, and 10 *l.* rent to the other of them for equality, though this rent be granted severally, yet they are coparceners of it; for they may join in one *sci. fa.* for it against the third. 29 *Aff.* 23, 16 *Vin.* 224.

To name the lands in the inquisition.

In the inquisition it is fit that the sheriff name the lands, &c. and allot and shew the contents of them. *Dalt.*

Inquisition on a writ of partition.

An inquisition indented, taken, &c. by virtue of his majesty's writ of *partitione facienda* to me directed, commanding me to cause ten messuages, &c. (here set forth the premises) in my county, to be divided into two equal parts, and one part of those parts to be delivered and assigned to *C. K.* and the other part thereof to *M. C.* to hold unto them and their heirs in severalty, on the oath of *A. B. C. D. E. F. &c.* (here set forth the jurors names) twelve free and lawful men of the said county, being charged and sworn to inquire of all and singular the matters and things in the said writ mentioned and contained, on their oath say, that the messuages, lands, tenements, and annual rents with the appurtenances, comprized in the schedule annexed, marked with the letter *A.* is one equal part of the messuages, lands, tenements, and annual rents, with the appurtenances, specified in the said writ, and that the several messuages, lands, tenements, and annual rents, comprized in the schedule hereto annexed, marked with the letter

The parcels may be set forth at large, and the rents, in the inquisition without annexing a schedule the same as in an elegit.

letter *B.* is the other equal part thereof, and the said messuages, lands, tenements, and annual rents, being so into two equal parts divided, I the said sheriff having respect to the true value thereof, on the day and year aforesaid, in the presence of the parties, by the oath and in the presence of the jurors aforesaid, the said first mentioned equal part comprized in the schedule marked with the letter *A.* to the said *C. K.* have caused to be delivered and assigned, and the said last mentioned partition, comprized in the schedule marked with the letter *B.* to the said *M. C.* have caused to be delivered and assigned; to hold to them and their heirs in severalty, by the assignment and allotment made as aforesaid, according to the exigency of the said writ, so that neither the said *C. K.* nor the said *M. C.* have more of the said messuages, lands, tenements, and annual rents aforesaid, with the appurtenances, than to them thereof belongs, and the said *C. K.* and *M. C.* may severally apportion themselves. In witness whereof, as well I the said sheriff, as the jurors aforesaid, have to this inquisition set our hands and seals, the day and year first above written.

Exchequer Process.

THE under-sheriff, or his deputy, is to attend unto, and to answer all the appofals in the court of *Exchequer*, *King's Bench*, and other his majesty's courts, when and where the sheriff shall be apposed called or examined; so that the high sheriff, his heirs, executors, &c. and his and their lands and goods, may be discharged of and from all fines and amerciaments.

Under-sheriff to attend and answer all the appofals.

The course of the *exchequer* is said to be thus, that so soon as the sheriff hath entered into his account (for issues, amerciaments, or mesne profits for intrusions and alienations without licence) to

Course of the court.

mark

As soon as the
sheriff becomes
debtor.

mark upon his head *O Ni* which is as much as, *oneratur nisi habeat sufficientem exoneratione*, &c. and presently he is thereby become the king's debtor of record, and a debet set upon his head. And as soon as the sheriff is become the king's debtor of record, presently are the other parties become debtors to the sheriff, and the sheriff in that case shall cause the debt to be levied against those particular persons by a *constat*. *Keilw.* 178.

Only account-
able for their
own time.

But they are only accountable for their own times, and for the year only; neither shall they be charged, in or upon their account, with any arrearages or duties, due to the king by any of their predecessors, in the said office. 2 & 3 *Ed. c.* 34.

Estreates to be
delivered in.

They are to deliver in the *exchequer* the estreates of amerciaments, fines, issues, and other things assessed, &c. before them.

Officers of the
Exchequer.

There are two officers, called parcel makers. These make the parcels of the escheator's accompts.

Pipe, seems to be a roll in the *exchequer*, otherwise called the great roll,

Officers.

Clerk of the pipe
Clerk of the estreates
Clerk of the poll
Clerk of the pleas
Clerk of the nibils
Foreign apposer

Remembrancer } *of the king*
 of the treasurer
 of the first fruits

4 Tellers
Lo. Treasurer
Writer of the tallies.

Sheriff or officer
to gather the
king's rents, &c.

If the sheriff (or his officers) shall gather or levy the king's rents, debts or other duties, and shall not account for the same in the *exchequer* upon his account, the sheriff is liable both to the king, and to the action of the party, besides the danger of the oath. *Dalt.* 481.

The

The high sheriff is accountable to the king. High sheriff accountable to the king.
And the under-sheriff shall yield and accompt to his high-sheriff. 11 R. 2. Fitz. Accompt. 48.

I paid these fees for the sheriff of Oxon for Fees paid.
quietus, &c.

Paid taking out the patent money	-	0	7	6
Casting sheriff out of court-	-	3	13	8
Deputy remembrancer's bill	-	7	16	8
Fees for <i>quietus</i>	-	22	10	4
Certificate and warrant of surplufage	I	2	0	
<i>Disfringas</i> money and fees of the tally	149	7	0	
Gratuity	-	1	1	0

Twice a year there are many processes issued out of the court of *Exchequer*, directed to the sheriff of each county, viz. the parsons process, for the arrear of their tenths, or first fruits, green wax, pipe or great roll, post fines, &c. twice a year which may be returned, as follow.

I hereby certify, that the several persons in the schedule to this writ annexed, have not, or hath either of them any lands or chattels in my bailiwick, whereby I can distrain them, or any or either of them, as within I am commanded, nor are they, or is either of them, found in the same. The answer of.

I humbly certify that the several persons named in the schedule to this writ annexed, are not, nor is any of them, found in my bailiwick. Non est inventus.

I humbly certify, that *A. B. clerk*, and *G. H. clerk*, two of the persons named in the schedule to this writ annexed, are not nor is either of them, found in my bailiwick, "and I further certify, that by virtue of this writ to me directed, I have attached the rest of the several persons in the schedule to this writ annexed named, whose bodies I have before the said barons at the time and place within mentioned, as within I am commanded." If some are not found, and some are, return thus.

N. B. This is in case you hold the body, or take the money.

I humbly certify that there are no heirs, executors, or administrators, of the several persons in the Mortuus process.

the schedule to this writ annexed named, nor any of them in my bailiwick, to whom I can give notice, as within I am commanded. The residue of the execution of this writ appears in the inquisition hereto annexed. The answer of.

Then take a blank piece of parchment and fill up the inquisition thus,

Inquisition.

An inquisition indented taken at in the county of aforesaid, on the day of in the 22d year of the reign of our sovereign lord *George* the third, by the grace of God of *Great Britain, France, and Ireland*, king, defender of the faith, &c. and in the year of our Lord 1782, before *J. P.* Esq. sheriff of the said county, by virtue of the writ of our lord the king to me directed, and to this inquisition annexed by the oath of *A. B. C. D. E. F. &c.* (here name the jurors) twelve good and lawful men of my bailiwick, who being sworn and charged on their oath say, that the several persons in the schedule to the said writ annexed named, at the time of their respective deaths, had not, nor had any or either of them, any goods or chattels, lands or tenements, in my bailiwick, to the knowledge of the said jurors. In witness, &c.

Return of mortuaries, to the parsons process.

I humbly certify, that before the coming of this writ to me, the within named *S. D.* clerk, was dead, so that I could not attach his body, as I am within commanded. The answer of.

Fi. fa. process if there is a levy.

I humbly certify, that of the goods and chattels, lands and tenements, of *G. W.* clerk, in the schedule to this writ annexed mentioned, I have caused to be made 5*l.* in the said schedule written upon him, which money I have ready before the said barons at the time and place within mentioned, as I am within commanded. The answer of.

Nulla bona to the fi. fa. process.

I humbly certify that the several persons in the schedule to this writ annexed named, have not, nor hath any or either of them, any goods or chattels, lands or tenements, in my bailiwick, whereby I can cause to be made the several sums of money

in the said schedule written, upon them or either of them.

I humbly certify that the several persons in the several schedules to this writ annexed named, have not or hath any of them, any goods or chattels, in my bailiwick whereof I can cause the several sums of money therein on them respectively charged, or any part thereof to be made: the said several persons are not, or is either of them found in the same; there are not any executors or administrators, or possessors of the goods and chattels, which were of the several persons deceased at the times of their several deaths, or any heirs or tenants of the lands or tenements which were theirs, at the time of their several deaths, in my bailiwick, which can be distrained: the residue of the execution of this writ appears in the inquisition hereunto annexed. The answer of.

Then take a blank inquisition and fill it up Inquisition.
thus.

Oxfordshire } AN inquisition indented, taken at
to wit. } the house of called or known
by the name or sign of in the county of
on the day of in the 22d The last day of
year of the reign of our sovereign lord *George* the the term.
third, by the grace of God of *Great Britain,*
France, and *Ireland,* king, defender of the faith,
&c. before *P. A.* Esq. sheriff of the county afore-
said; by virtue of a writ of our lord the king to
me directed, and to this inquisition annexed, to
enquire of certain matters in the said writ speci-
fied, by the oath of *A. B. C. D. E.* (here insert
the twelve jurors) honest and lawful men of my
bailiwick, who upon their oath say, that the se-
veral persons in the several schedules to the said
writ, and to this inquisition annexed named, on
the several days on which they first became in-
debted to our said lord the king, or at any time
since, had not, or had any of them, any lands or
tenements, or on the day of in the The test of the
same writ mentioned, had they or any of them any writ.
goods

goods or chattels in my bailiwick to the knowledge of the said jurors, which can be seized or taken into his majesty's hands by virtue of the said writ. In witness, whereof as well I the said sheriff, &c.

To the distringas process against executors, &c.

I humbly certify that there are no executors of the last wills and testaments of the several persons in the schedules to this writ annexed, nor any administrators, or occupiers, of the goods and chattels of the said persons which were theirs at the times of their respective deaths, nor any heirs or tenants of their lands and tenements, in my bailiwick which can be distrained. The answer of.

Distringas process.

I humbly certify that the several persons in the several schedules hereunto annexed, have not, nor hath any or either of them, any lands or chattels in my bailiwick, where or by which I can distrain them, or either of them, as within I am commanded, nor are they or is either of them, found in the same. The answer of.

Sci. fa. process.

The several persons in the several schedules hereto annexed, have not, nor hath either of them, any thing in my bailiwick, whereby I can give notice to them, or either of them, as within I am commanded, nor are they or is either of them, found in the same. The answer of.

Warrant to levy debts on great roll of the pipe.

Oxon } G. K. Esq. sheriff of the county afore-
to wit. } said, to G. K. my bailiff, greeting:
By virtue of his majesty's writ to me directed, I command you, that you omit not by reason of any liberty in my bailiwick, but enter the same, and levy out of the goods and chattels of the several persons named in the schedule hereunder written, the several sums of money charged upon (*them, him, or her, as the case is*) and each of them in the said schedule, or required from (*them, him, or her,*) or any of them, so that I may have that money before the barons of his majesty's *exchequer*, at *Westminster*, without delay, and what you do herein, return to me, so that I may make the same appear to the said barons at *Westminster*, on the morrow of *All Souls* next coming. Hereof fail not,

Add a copy of the schedule.

not, as you will answer at your peril, given under the seal of my office, the day of
in the year of our Lord 1782.

By the same sheriff.

Oxon } G. K. Esq. sheriff of the county
to wit. } afore said, to W. R. my bailiff, for
this purpose only greeting. By virtue of his majesty's writ of summons of the green wax to me directed, I command you, that you be before the barons of his majesty's *Exchequer*, at *Westminster*, on next coming, and that you in the mean time levy, and have there with you, all the debts under written, together with this my warrant, so that I may then and there pay the said debts to the use of his said majesty. Hereof fail not, as you will answer at your peril. Given, &c.

Warrant to the officer to collect post fines and old rents.

By the same sheriff,

Post-fines.

Old-rents.

(Insert all the post-fines) (Insert all the old-rents)

Oxon } G. K. Esq. sheriff of the county afore-
to wit. } said, to W. R. my bailiff greeting: By
virtue of the writ of our sovereign lord the king to me directed, I command you, that you do not omit by reason of any liberty in my bailiwick, but enter the same, and levy of the goods and chattels of J. E. of, &c. 5*l.* and of the goods and chattels of W. B. of, &c. 5*l.* forfeited at the general quarter sessions of the peace of our lord the king held at in and for my said county, the and days of in the year of his majesty's reign, for not appearing on the grand jury, altho' duly summoned, and when you shall so levy the same, you safely and securely keep, so that I may answer the same to the barons of his majesty's *Exchequer* at *Westminster*, on next coming. Hereof fail not. Given, &c.

Warrant to levy fines set at sessions for not attending as jury-men on exchequer process.

By the same sheriff.

Oxon } G. K. Esq. sheriff of the county afore-
to wit. } said, to W. R. my bailiff, greeting: By
virtue of his majesty's writ to me directed, I command you, that you do not omit by reason of any liberty in my bailiwick, but that you enter the same,

Warrant to levy post-fines, and old-rents, &c. by virtue of a writ of assistance.

Return of Writs.

same, and assist in aid R. B. Esq. late sheriff of my county, to levy for him, all the debts and sums of money hereunder mentioned, and what you shall do in the premises, and whom you shall distrain, and for what sums, do you make appear to me, so that I may make the same appear to the barons of his majesty's *Exchequer*, at *Westminster*, on next coming. Hereof fail not.
Given, &c. By the same sheriff.

Excommunicato Capiendo.

Need not bring in the body at the day, but only return the writ.

THE sheriff or other officer to whom the writ of *excommunicato capiendo*, or other process shall be directed, need not bring the body into the king's-bench at the day of the return, but shall only return the writ thither, with declaration briefly in what manner he hath served and executed the same. *Stat. 5 Eliz. c. 23. Dalt. 217.*

To be committed to gaol, if taken.

If the sheriff take him, he is to be committed to prison without bail. *Ibid.*

Untrue return.

If he make an untrue return he is to forfeit to the party grieved, 40 l. *Ibid.*

Return of cepi corpus.

I have taken the within named J. D. whose body remains in the prison of the lord the king of, N. under my custody. The answer of.

Elegit.

FOR the particulars of this writ as to the execution thereof. *Vide title execution, p. 162.* The charge to the jury on the taking the inquisition, *fo. 170.* Sheriff to impanel a jury, &c. 166.

Return to an elegit.

The execution of this writ appears in the inquisition hereunto annexed. The answer of.

The inquisition.

Kent (ss.) An inquisition indented taken at the house of J. K. called the *White-hart*, in

in

in the county of aforesaid, on the
 day of 1786, in the 26th year of the reign
 of our sovereign lord *George* the third, by the grace
 of God of *Great Britain, France, and Ireland*, king,
 defender of the faith, and so forth, before me *S. C.*
Esq. Sheriff of the county aforesaid, by virtue of
 his majesty's writ to me directed and to this inqui-
 sition annexed, upon the oath of (here name the
 twelve jurors) good and lawful men of my baili-
 wick, who being sworn and charged upon their
 oath say, that *C. D.* in the said writ named, on
 the day of in the 26th year of the
 reign of his present majesty, on which day the
 judgment in the said writ specified was given
 against the said *C.* was and on the day of taking
 this inquisition is seized and possessed of and in the
 several goods and chattels following, that is to
 say, (here set forth the goods) of the value of 50*l.*
 which said goods and chattels I have made and
 delivered to the said *A. B.* in the writ named to
 hold to him as his own goods and chattels, in part
 satisfaction of the debt and damages in the said
 writ mentioned; and the jurors aforesaid on their
 oath aforesaid, further say, that the said *C. D.* in
 the said writ named hath not, nor had he on the
 said day any lands or tenements
 or any other or more goods or chattels in my bai-
 liwick, to the knowledge of the said jurors which
 may or can be extended or appraised, in witness.

(a) For and during the term of his natural life
 of and in a certain messuage or tenement, stable,
 brewhouse, out-buildings, yard, garden, and pre-
 mises, situate in the *High-street*, in the town of *S.*
 in the said county of *Kent*, and now in the tenure
 or occupation of *G. H.* of the clear yearly value
 of 14*l.* in all issues beyond reprises; and also of
 and in a certain other messuage or tenement, with
 the washhouse, yard, garden and premises there-
 unto belonging adjoining to the said last mention-
 ed messuage or tenement, in the *High-street*, in *S.*
 aforesaid, late in the occupation of *E. F.* but now
 I i untenanted,

(a) If lands are
 taken, say, is
 seized.

untenanted, of the clear yearly value of 8 *l.* in all
 issues beyond reprises, and also of and in a cer-
 tain other messuage or tenement, yard and premi-
 ses in the *High-street*, in *S.* aforesaid, now in the
 occupation of *T. A.* of the clear yearly value of
 6 *l.* in all issues beyond reprises, and also of and
 in a certain other messuage, &c. in, &c. of the
 clear yearly value of 7 *l.* in all issues beyond re-
 prizes, and also, &c. of the clear yearly value of
 50 *s.* in all issues beyond reprises, and also of and
 in a certain other small messuage or cottage ad-
 joining to the last mentioned messuage in *S.* aforesaid,
 now in the occupation of *W. W.* of the clear
 yearly value of 50 *s.* in all issues beyond reprises,
 and the jurors upon their said oath further say,
 that the said messuage or tenement, stable, brew-
 house, out-buildings, yard, garden, and premi-
 ses in *S.* aforesaid, in the occupation of *J. C.* of
 the yearly value of 14 *l.* and the said messuage,
 yard and premises in *S.* aforesaid, in the occupa-
 tion of the said *T. A.* of the yearly value of 6 *l.*
 are a true and equal moiety of all and singular the
 said lands and tenements of the said *C. D.* in the
 said writ named, and which said moiety, I the said
 sheriff, on the day of taking this inquisition, have
 delivered unto the said *A. B.* in the said writ
 named, at a reasonable price and extent, to hold
 to him and his assigns as his own free tenement,
 according to the form of the statute in that case
 made and provided, until he shall thereof have
 fully levied the debt and damages in the said writ
 mentioned, as by the said writ I am commanded;
 and the said jurors upon their said oath further
 say, that the said *C. D.* in the said writ named, at
 the time of giving the said judgment in the said
 writ specified, had not, nor on the day of taking
 this inquisition hath, any other goods or chattels,
 or any other or more lands or tenements in my
 bailiwick, to the knowledge of the said jurors,
 which may or can by any means be extended or
 appraised. In witness whereof, as well I the said
 sheriff,

sheriff, as the said jurors, have to this inquisition put our seals, the day and year, and at the place first above written.

Oxon. } AN inquisition indented taken before to wit. } me *P. A. Esq.* sheriff of the county aforesaid, at the house of *John Signall*, known by the name or sign of the *White Bull*, situate and being at *Oxford* in the county aforesaid, on *Monday* the 5th day of *April*, in the 26th year of the reign of king *George* the third, and in the year of our Lord, 1786, by virtue of a certain writ of our said lord the king to me directed, and to this inquisition annexed, by the oaths of *A. B. G. D.* (here name the 12 jurors) good and lawful men of my bailiwick, who upon their oath say, that *A. B.* in the said writ named, hath not any goods or chattels in my bailiwick to the knowledge of the jurors aforesaid, and the jurors aforesaid upon their oath aforesaid further say, that the said *A. B.* on the

Inquisition on an elegit where lands, houses and quit-rents are found.

day of in the year of our Lord, 1786, on which day the judgment in the said writ mentioned was given against him, and on the day of taking this inquisition, was and is seised for and during the term of his natural life, of and in the lands, tenements, and quit-rents within the bailiwick of me the aforesaid sheriff hereinafter mentioned and described (that is to say) of and in a capital messuage or mansion-house called with the stables, offices, courts, gardens, edifices and buildings, thereto belonging, or therewith held or enjoyed, together with seven closes of pasture ground, containing by estimation twenty-nine acres, be the same more or less, which said premises are situate and being in the parish of *B.* in the said county, and are in the several occupations of *John Denn*, *Richard Fenn*, *John Nayler*, *Richard Bull* (here name the tenants) and are of the clear yearly value of *l.* in all issues, beyond reprises, and also of and in, &c. here set forth the other messuages, closes, and premises of which the defendant is seised, the tenants names; and the parishes

Return of Writs.

they lie in), then say, all which messuages, tenements or lands, rents, hereditaments and premises before mentioned, are of the clear yearly value of 2723*l.* 18*s.* over and above reprises, and that the said capital messuage or mansion house called _____ with the stables, offices, courts, yards, gardens, edifices, buildings and appurtenances thereto belonging, and the said seven closes, &c. (here set forth the moiety of the lands, &c. and describe them particularly as before) and also the said several quit-rents or sums of money yearly accruing and payable out of certain lands and hereditaments within the manor of _____ in the several occupations of the said _____ or their under-tenants or assigns, and the said twenty acres of land in the occupation of the said _____ and the several quit-rents in the parish of *C.* in the said county, payable by _____ (here name the persons, are of the clear yearly value of 1361*l.* 19*s.* in all issues beyond reprises, and are the true and equal moiety of all the said lands and tenements of the said *A. B.* in my county, which moiety of the said lands and premises, I the said sheriff on the day of taking this inquisition have caused to be delivered to *C. D.* in the said writ named by the price and extent aforesaid, to hold the said moiety of the said several messuages, farms, manor, lands, tenements, and other the premises aforesaid to him and his assigns as his freehold, according to the form of the statute in such case made and provided, until the debt and damages in the said writ mentioned shall be thereof levied, if the said *A. B.* shall so long live, as by the said writ I am commanded, and the jurors aforesaid upon their oath aforesaid, further say, that the said *A. B.* had not on the _____ day of _____ last above mentioned, nor on the day of the taking this inquisition, hath any other lands or tenements in the said county, to the knowledge of the said jurors. In testimony whereof, as well I the said sheriff as the said jurors, have to this inquisition, put

put our hands and seals on the day and year, and at the place first above written.

G. B. Esq. Sheriff.

Exigent and Proclamation.

UPON the return of *exigent*, it must appear, that it was by the judgment of the coroners, (for they be judges) otherwise it is error. 21 H. 7. 33. Co. Litt. 288. And he shall be called by the sheriff on the *exigent*, at five county court days, to answer to the law, and if he come not within that time, he is to be returned outlawed.

And no county court ought to be omitted, but when that the proclamation begins, the sheriff ought to pursue the same at every county after, without omission. Pls. 37.

No county court to be omitted.

The return of an *exigent* shall be void, by reason of incertainty, as where the sheriff returns the *exigit*, *quod ad comit. Lancastr. tent. ibidem*, &c. when it should be, *ad comitat. Lancastr. tent. apud Lancastr.* (or at some other certain places, whereto *ibidem* might have relation.) So the sheriff returneth the writ thus. At my county court held at the castle of Oxford, &c. and sets not down in what county. Dalt. 237.

Return of an *exigent*, void for uncertainty.

So the sheriff returneth, that he made proclamation at his county court, held *tali die*, and shewed not what year. 27 H. 8. Br. Ret. 3.

If sheriff return not the year on proclamation, bad.

If the party brings a *superfedeas* to the *exigent*, and delivers it to the sheriff, the outlawry shall not be pronounced. Dalt. 238.

Superfedeas comes, outlawry not to be pronounced.

If the defendant come in at any of the five counties, the sheriff is to take and imprison him. But if he comes not, then the sheriff with the assistance of one coroner at the least, is to pronounce him outlawed. Finch. 346. and sheriff to return same. *Ibid.*

If defendant comes in at any of the five counties, sheriff may take him.

Return of party
dead, not good.

Upon an *exigent*, a return was made, that the party was dead, and held not good, for the sheriff hath no authority by the *exigent*, but to call the party from county to county, to appear, and answer to the law, and if he appear, then to take and imprison him. *Dalt.* 239.

May return co-
roners absent,

or no coroner
there, but one
who refused.

The sheriff may return, that the coroners were absent, on the *quinto exactus*, therefore he could not proceed. Or that no coroner was there but one, who refused to pronounce the outlawry. *Lib. intrand.* 334, 335, 336.

On indictment.

Upon an indictment before justices of the peace, if the *exigent* shall be returned, *quarto exactus*, and that he cannot call the party any more for shortness of time, it seems to be a good return. *Crom.* 149, 150.

No county court
held.

That there was no county court held from the receipt of the writ, to the day of the return. *Dalt.* 240.

When superse-
deas may be re-
turned,

A supersedeas may be returned by the sheriff before the fifth exaction to any one of the defendants in the *exigent*, and the exaction against the others. *Dalt.* 336.

Where any exi-
gent is awarded,
a writ of procla-
mation shall be
made out, and
sheriff to make
three proclama-
tions.

Where any *exigent* shall be awarded, a writ of proclamation shall be made out, directed to the sheriff of the county, and the sheriff shall make three proclamations; one in open county court, one other at the general quarter sessions of the peace in those parts where the party defendant, at the time of the *exigent* awarded, shall be dwelling, and one other, one month at least before the *quinto exactus*, by virtue of the said writ of *exigent*, at or near the most usual door of the church or chapel of that town or parish where the defendant shall be dwelling, at the time of the *exigent* so awarded; and if the defendant shall be dwelling out of any parish, then in such place as aforesaid, of the parish in the same county, and next adjoining to the place of the defendant's dwelling; and upon a *Sunday* immediately after divine service and sermon, if any sermon there be; and if no sermon there be, then forthwith after divine service; and that all out-

outlawries had and pronounced, and no writs of proclamation awarded and returned, according to the form of this statute, shall be utterly void, and of none effect. 31 *Eliz. c. 3. f. 1.*

Whensoever any writ of *exigent* shall be awarded in any action in the *King's Bench*, or *Common Pleas*, against any person dwelling in *Wales*, *Lancashire*, or *Cheshire*, or *city of Chester*, one writ of proclamation shall also be awarded, &c. and every sheriff, &c. shall make proclamation of the said writ of proclamation according to the tenor thereof, and true return thereof as the writ requires. 1 *Ed. 6. c. 10. f. 2.*

Exigent in Wales
Lancaster, Che-
shire or Chester,
how to proclaim.

Writs of proclamations and exigents, against any person dwelling within the county palatine of *Durham*, shall be directed to the bishop or (*chancellor*) of *Durham*, &c. And the said bishop, &c. shall by his mandate directed to the sheriff of the said county palatine, cause proclamation to be made of the same, according to the tenor of the same writ, and make returns into such courts as the tenor requires. 31 *Eliz. c. 9.*

Durham.

At the husting of *Common Pleas* held in the *Guildhall* of the city of *London*, on next, after the feast of *St. Dunstan* the bishop, in the 26th year of the reign of his present majesty, the within named *J. J.* was first demanded, and did not appear: At the hustings of *Common Pleas*, held in the *Guildhall* aforesaid, on next after the feast of *St. P.* the virgin, in the year above written, the within named *J. S.* was a second time demanded, and did not appear: At the husting of *Common Pleas*, held in, &c. on, &c. the said *J. S.* within named, was a third time demanded, and did not appear: At, &c. was a fourth time demanded, and did not appear: At, &c. was a fifth time demanded, and did not appear. Therefore the said *J. S.* is outlawed. The answer of, &c.

Return of an
exigent in Lon-
don, and out-
lawry.

If there are not sufficient hustings from the teste of the exigent to the return, return those that are

If no more hust-
ings.

Return of Writs.

passed and say, And because there was no other hustings of Common Pleas, held in the *Guildhall* aforesaid, from the time of issuing out of this writ, until the return thereof, therefore we cannot proceed further thereon.

N. B. There are pleas of land, and common pleas, either of which may be returned in the exigent, but that you begin with, you must continue until *quinto exactus*.

On this return, there issues an allocatur, to allow the other hustings that are deficient.

Return cepi on the exigent, on the second exaction.

At my county court, held at, &c. the within named *A. B.* was a first time demanded, and did not appear: At my county court, held at, &c. in the county aforesaid, the aforesaid *A. B.* was a second time demanded, and the said *A. B.* appeared, and rendered himself in the prison of the lord the king of *Newgate*, in the county within written, under my custody, whose body I have ready before the king's justices within written, at the day and place within contained, as I am within commanded.

Return to the allocatur.

At the husting of Common Pleas, held at, &c. as before. (Here insert the other exactions from the teste, until he has been a fifth time demanded.) Therefore, &c.

Return of an exigent in Middlesex.

By virtue of this writ to me directed, at my county-court, holden at, &c. in and for the county of *Middlesex*, on the day of in the twenty sixth year of the reign of our sovereign lord *George* the third, now king of *Great Britain*, &c. the within named *C. D.* was a first time demanded, and did not appear, and at my county court holden at the same place, the day of in the year aforesaid, the aforesaid *C. D.* was a second time demanded, and did not appear, and at my county court holden at the same place, the day of in the year aforesaid, the said *C. D.* was a third time demanded, and did not appear. The answer of.

The

The sheriff must return the day and year of the king to every *exaetus*; and therefore, if the day and year of the king be inserted in the *first, second, third, and fifth exaetus*, but omitted in the *fourth*, it is erroneous, and shall not be supplied by intendment. 2 Roll. Abr. 802. 2 Hale. P. C. 203. So if there be less than a month between the first and second *exaetus* it is erroneous. 2 Roll. 803. It must shew where the county court was held. 2 Hale. 203.

Must return the day and year of king to every *exaetus*.

By virtue of the within writ to me directed, I caused the within named C. D. to be proclaimed three several days, according to the effect of the within mentioned statute, as I am within commanded. The answer of.

Return on the writ of proclamation.

By virtue of this writ to me directed, at my county court, holden at, &c. in and for the county of *Middlesex*, the day of in the 26th year of the reign of our sovereign lord George the third, now king of *Great Britain*, &c. the within named C. D. was a fourth time demanded, and did not appear, and at my county court holden at the same place, the day of in the year aforesaid, the said C. D. was a fifth time demanded and did not appear; therefore by the judgment of Esq. his majesty's coroner of the said county, the said C. D. according to the law and custom of this realm is outlawed. The answer of.

Return on the allocatur exigent

Judgment must be given by the coroner. Dyer. 223. Bro. Ceron. 166. 3 Inst. 212.

Before the 5th exaction of the defendant, frequently the old sheriff goes out of office, as between *Trinity* and *Michaelmas* term, he goes out the 28th of *September*, and the return of the *allocatur exigent*, is not until the 3d of *November*, therefore return the exactions made at those courts held by the old sheriff in his name, then before you return the next exaction, indorse the writ thus: This writ, as above indorsed, was delivered to me the undernamed now sheriff, by the above named late sheriff, at the time of his going out of office: At my county court held at the same place, the day of in the year aforesaid, the said C. D.

Before 5th exaction, sheriffs goes out of office, how to return.

New sheriff's return.

was

Return of Writs.

was a fifth time demanded, and did not appear: Therefore by the judgment of, &c. as before. The answer of the new sheriff.

If of a woman outlawed.

Therefore by the judgment of, &c. the said *Ann Dee*, according to the law and custom of this realm, is waived. *Dalt.* 240.

Superfedeas.

Sheriff's return on receipt of superfedeas.

If in the mean time a writ of *superfedeas* issues to the sheriff, then, upon the receipt of it, he returns the county court held before the date of the writ of *superfedeas* received by him, and the exactions made of the defendant, which he indorses on the *exigent* or *allocatur* thus, I have altogether ceased from executing this writ, having received his majesty's writ of *superfedeas* for that purpose. The answer of.

Extent.

King's debt to be preferred.

King's judgment affects all lands of his officers.

Immediate extent tested after distress.

THE king's debt shall, in suing out execution, be preferred to that of every other creditor, who hath not obtained judgment before the king commenced his suit. *Stat.* 33 *H.* 8. *c.* 29. The king's judgment affects all lands, which the king's debtor hath at or after the time of contracting his debt, or which any of his officers mentioned in *stat.* 13 *Eliz.* *c.* 4. hath at or after the time of his entering on the office. So that if such officer of the crown, aliens for a valuable consideration, the land shall be liable to the king's debt, even in the hands of a *bona fide purchaser*; though the debt due to the king was contracted by the vendor many years after the alienation. 10 *Rep.* 55, 56.

An immediate extent against the king's debtor, tested after a distress for rent taken, although justly due to the landlord, and an appraisement of the goods and chattels made, but not sold, shall prevail against the distress. *Park. Rep.* 112.

So shall an extent on the day of the date of an assignment under a commission of bankrupt. *Ibid.* 126, 127. Extent on day of assignment.

Debts either by specialty or simple contract, may be found and seized into the king's hands to the third degree, but not beyond. *Ibid.* 259, 260. What may be found.

Immediate extents shall be preferred according to the teste, and before extents in aid. *Ibid.* 281. And a second immediate extent, upon which evidence was offered to find the goods seized in aid, shall be preferred to a prior immediate extent, not offering such evidence. *Ibid.* 282. Immediate extents to be preferred to extents in aid.

If execution be upon a judgment against the king's debtor, and before a *venditioni exponas*, an extent comes at the king's suit, those goods cannot be taken on an extent. 2 *Black. Rep.* 1294. *Park. Rep.* 260. 262. *Hard.* 27. 2 *Roll. Abr.* 159. If execution, and before ven. expon. an extent comes, cannot take those goods.

The statute 33 H. 8. c. 39. s. 74. enacts, That the king's suits or process for recovery of his debts, shall be preferred before the suit of any other person, so always, that the king's said suit shall be taken or commenced, or process awarded for the said debt, at the king's suit, before judgment given for the said other person or persons. King's suits to be preferred, if before judgment of the other plaintiff.

This statute is construed thus, that the former part of it is declaratory of the old prerogative law, the latter a new restriction of it, so that it shall not take place after judgment given for the subject. 2 *Black. Rep.* 1295. Construction.

Upon an extent on a statute staple, the sheriff returned the extent of the lands, and not of the goods, yet good. *Br. Tra.* 438. Return of lands, and not of goods.

He may return, *non est inventus*, and that he hath no goods or lands. May return non est inventus.

Or that none came to receive the land. *lib. intrand.* 596.

That the debtor is a clerk. *Dalt.* 23. Also upon this writ, the sheriff may return, that he cannot make execution, for that another hath those lands in execution by force of an elegit, or that another is in by descent, for that they are not Debtor, clerk: May return that he cannot make execution, &c.

to be put out of possession without a *scire facias*, *Fitz. Ret.* 112. *Execut.*

Extended the
lands but not
that he had de-
livered, bad.

Upon an *extendi facias*, on a statute merchant, the sheriff returned that he had extended the lands, but did not return that he had delivered them to the plaintiff; whereupon it was moved that the sheriff should be amerced. *Fitz. Execution* 38, 73. 117.

Lands and goods
to be appraised.

If an extent comes to the sheriff, he shall presently cause the lands and moveable goods of the debtor to be appraised, (and delivered to creditors, or else he may cause the goods to be sold as far as the debt doth amount) and the debt without delay to be paid to the creditor, and such valuation and appraisement shall be by a jury, and the sheriff shall deliver the same by reasonable price, as much as doth amount to the debt. And if the praisers of the lands, or goods, do set an over price, to the damage of the creditor, then shall the things so praised, be delivered to the praisors at the same price, and they shall be forthwith answerable to the creditor for his debt. &c. And if the goods be delivered to the appraisors, they shall not pay the money until the days which are assessed and limited in the extent: but they shall presently become debtors for the duty, and chargeable for the payment thereof, at such days as the rents are payable, or the revenues receivable, and not before, *Plow.* 205. *b.* *F. N. B.* 165.

Sheriff must sell
to the best bid-
der.

And note, that the sheriff must sell the goods to them which offer most for them, and if the sheriff shall sell them at an under price, it seems the debtor hath no remedy,

If debtor no
goods, then his
body to be taken.

If the debtor have no moveables whereupon the debt may be levied, then shall his body be taken and kept in prison until he hath made an agreement, &c. 13 *E.* 1.

If taken, body
to be delivered
with his lands.

And so soon as the debt is levied, the body of the debtor, shall be delivered with his lands. 4 *Co.* 67.

The

The sheriff may return that he hath extended the land of the defendant, but that he cannot deliver the same, for that another had the same in extent before. *Dalt.* 125.

By this writ the sheriff is commanded to take the body of the defendant, and also to seize his goods and chattels, lands and tenements, which were in his hands, at the time of the debt being due or after.

If he take goods, &c. in his hands he is to summon a jury thereon of 12 men, who upon an appraisement being taken, finds the value, as also what other goods, lands, &c. he had at the time the defendant was indebted to the king, or at any time since; when the jury have found, the sheriff returns the writ, with the inquisition annexed, to the court of exchequer, who issue out a *venditioni exponas* for sale of such goods seized. There is always evidence laid before the jury to find on this writ.

You shall well and truly inquire what lands and tenements, and of what yearly value *C. J.* had in my bailiwick, on the day of in the 26th year of the reign of his present majesty, on which day, he was found indebted to his majesty, or at any time since, and what goods and chattels, and of what sorts and values, and of what debts, credits, specialties, and sums of money, the said *C. S.* or any person or persons, to his use, or in trust for him, now hath or have in my said bailiwick and that you appraise such goods and chattels, so that I may extend, seize, and take the same into his majesty's hands, until his majesty shall be fully satisfied the sum of 1000 *l.* due to his majesty, upon an extent, directed to me, tested the day of in the 26th year of his reign. *So help you God.*

Great care is to be taken on the return of the inquisition, as if lands are taken by the sheriff, houses, &c. that they be properly described, and how they came to be the defendant's property.

The

May return extended lands, and cannot deliver, for another had the same in extent before. What the sheriff is commanded to do.

To summon a jury if he takes goods.

The oath of a juryman.

Care to be taken on the return.

The like if leases are seized. So of debts due to the defendant, either for goods sold, money lent, or had and received to his use. If bills or notes are seized and taken, they must also be particularly inserted, their dates, by whom drawn or indorsed, and how they became the property of the defendant.

The form of an
inquisition.

vs. An inquisition indented taken at the house of called by the name or sign of in the 22d year of the reign of our sovereign lord *George* the third king of *Great Britain*, &c. before *J. P.* Esq. sheriff of the said county, by virtue of his majesty's writ of immediate extent, issued out of his court of *exchequer* at *Westminster*, against the estate and effects of *C. S.* late of and to the said sheriff directed, and to this inquisition annexed, upon the oath of *A. B. C. D. E. F.* (here name the twelve jurors) honest and lawful men of the county of the aforesaid sheriff, who being sworn and charged to enquire touching the matters in the said extent mentioned, do on their oath say, that the said *C. S.* in the said writ named, on the day of being the day of issuing the said writ, was, and on the said day of taking this inquisition is, possessed as of his own proper goods and chattels, and of and in the several goods and chattels following, (to wit) here set forth the goods from the inventory, and which said goods and chattels the said jurors do find to be, and do appraise the same at the sum or value of *1875 l. 9d.* and the said jurors do further say, that the said *C. S.* on the said day of and on the day of taking this inquisition, is possessed as of his own proper monies, of and in the sum of of lawful money of *Great Britain*, in monies numbered, and the said jurors upon their said oath further say, that *A. B.* of, &c. on the said day of was, and on the said day of taking this inquisition is, indebted unto the said *C. S.* in the sum of *20 l.* for divers goods, wares, &c. sold and delivered to the

The teste of the
writ.

the said *A. B.* and so on "*specifying each debt due and for what, as also all bonds, bills, notes, &c. and how they became his property,*" all which goods, chattels, stock in trade, debts and monies numbered, I the said sheriff have, on the said day of taking this inquisition, taken and seized in to his majesty's hands, by virtue of the said writ, as by the said writ I am commanded. In witness, &c.

The within named *C. D.* is not found in my bailiwick, the residue of the execution of this writ appears in the inquisition hereto annexed. The answer of. The return.

Poundage on Extents, &c.

BY stat. 3 Geo. 1. c. 15. it is enacted, That from and after the *ninth* day of *July*, in the year of Lord 1717, all sheriffs who shall levy any debts, duties, or sums of money whatsoever, *except post fines*, due, or hereafter to become due to the king's majesty, his heirs or successors, by process to them directed upon the summons of the pipe, or green wax, by *levari facias* out of the court of *exchequer*, shall from time to time, for their care pains and charges, and for their encouragement therein, have an allowance upon their accounts of 12 *d.* out of every 20 *s.* for any sum not exceeding 100 *l.* so by them levied or collected; and the sum of 6 *d.* only for every 20 *s.* over and above the first 100 *l.* and for all the debts, duties, and sums of money, (*except post fines*), due, or to become due to his majesty, his heirs, and successors, by process and *fieri facias*, and *extent*, issuing out of any of the offices of the court of *exchequer*, the sum of 1 *s.* 6 *d.* out of every 20 *s.* for any sum not exceeding 100 *l.* so by them levied or collected; and the sum of 12 *d.* only for every 20 *s.* over and above the first 100 *l.* provided always that such sheriff shall duly answer the same upon his account by the general

Sheriff levying debts, &c. (*except post fines*) due to the crown by process or the pipe by *levari facias* to have 12 *d.* per pound for the first 100 *l.* and 6 *d.* for every 20 *s.* above that sum, and on process by *fi. fa.* and *extent* to have 1 *s.* 6 *d.* per pound, for the first 100 *l.* and 1 *s.* per pound above, provided he answer the same on his accounts by a day to be fixed by a warrant of the barons.

next sealing day of such term in which he ought to be dismissed the court, or in such time to which he shall have a day granted to finish his said accounts, by warrant signed by the lord chief baron, or one of the barons of the coif of the said court, for the time being, and not otherwise. *Sect. 3.*

When a sheriff by exchequer process seizes or extends goods or personal estate for the king's debts, and dies, or is superseded before a venditioni exponas awarded or sale, and the subsequent sheriff makes sale, &c. The exchequer court, if sitting, or if not, any baron, may settle and apportion the fees or poundage between the precedent and subsequent sheriffs, regard being had to the expences and trouble of each sheriff.

And whereas it frequently happens that the process issuing out of the court of *exchequer*, for levying debts and duties due to the crown, may be in part executed by a sheriff before he be superseded, and afterwards in part by the subsequent sheriff, and no provision hath hitherto been made for settling and adjusting the distribution of the fees and poundage claimed and demanded by them in such cases. Be it enacted, That when, and so often as any sheriff shall, by process out of the court of *exchequer*; seize or extend any goods, chattels, or personal estate, into the hands of his majesty, his heirs, or successors, for any debts, or duties due to the crown, and shall die, or be superseded before a writ of *venditioni exponas* be awarded to him for sale of the same, or before such sheriff hath made actual sale thereof, and a writ shall afterwards be awarded to a subsequent sheriff, who by virtue thereof, shall make sale or disposition of such goods, chattels, and personal estate, so seised or extended by such preceding sheriff as aforesaid, in case the barons of the court of *exchequer*, if then sitting, and if not sitting, the said barons, or any one of them, being of the degree of the coif, shall order, settle, and apportion, the fees, or poundage, due for such seizure and sale, betwixt such preceding and subsequent sheriffs, in such manner or proportions as to him or them shall seem meet, with regard to the expence and trouble each sheriff hath had, or shall have, in the execution of the said process. *Sect. 9.*

Not to take fees for levying the king's debts.

"No sheriff, &c. in levying debts due to the crown, by process out of the *Exchequer*, shall take any fee, on pretence of such levying, &c. (except fourpence for an acquittance) which

"such

" such officer is to give to the person on whom
 " such debt, &c. is levied, and the bailiff, &c. re-
 " ceiving such debt, &c. shall account for the same
 " to the sheriff, and may require an acquittance
 " from such sheriff without fee; from which
 " debts, the sheriffs shall discharge the debtors,
 " by totting and answering the same on their ac-
 " counts in the *exchequer*; and if any sheriff, &c.
 " shall *nihil*, or not duly answer the crown, any
 " debt so levied, he shall forfeit treble damages to
 " the party grieved, and double the sum which
 " shall be decreed to the party grieved by the court,
 " on complaint and proof of such abuse before the
 " barons, in such summary way as to them shall
 " seem meet, and if any sheriff, &c. shall demand
 " any money from any person from whom any
 " any debt is payable to the crown by process out of
 " the *exchequer*, on pretence of executing the pro-
 " cess, or in respect of fees due for collecting the
 " same; or if any one of the officers aforesaid
 " shall demand any sum for forbearing to levy
 " such debts, written out to them, by the said
 " process, every such offender shall be adjudged
 " guilty of extortion, injustice, and oppression,
 " and being thereof convicted, shall forfeit treble
 " damages and costs to the party grieved, and dou-
 " ble the sum extorted, to be decreed by the ba-
 " rons on complaint and proof, in a summary
 " way; provided such conviction be within
 " two years after the offence." Stat. 3 Geo. 1. c.
 15. s. 13.

And in case any sheriff, under-sheriff, or deputy
 sheriff, shall *nihil* or not duly answer to the
 crown, any debt, or sum of money, so levied,
 collected, or received, such sheriff, under-sheriff,
 or deputy sheriff, for every such offence shall for-
 feit treble damages to the party grieved, and dou-
 ble the sum so *nichilled*, or not duly answered as
 aforesaid; which said damages and penalty shall be
 ordered, decreed, and given to the person grieved
 by the court of *exchequer*, upon complaint and

K k

proof

Extortion.

And if a sheriff,
 &c. shall *nihil*,
 or not answer
 such debts col-
 lected, he for-
 feits for each
 offence treble
 damages to the
 party, and dou-
 ble what is so
nichilled, or not
 answered to be
 ordered by the
 court of *exche-*

quer, on complaint and proof, in a summary way; and if a sheriff or other demands or takes any money for executing such process, or (as fees) for collecting such debts, or for not levying or forbearing to levy any debt to the crown so written in process, and thereof convicted, he is guilty of extortion, and forfeits treble damages and costs to the party grieved, and double the sum extorted, to be ordered by the exchequer, in a summary way on complaint and proof, if convicted within two years after the offence.

But the sheriff may take such poundage and allowance as is given by this act, or by warrant of the lord treasurer, &c. for any extraordinary ser-

proof of such abuse, as aforesaid, made and exhibited before the barons of the said court, in such short and summary way and method, as to them shall seem meet. And in case any sheriff, under-sheriff, deputy sheriff, bailiff, or other person, shall presume to demand, take, or receive any sum or sums of money whatsoever, be the same more or less, of any person whatsoever, from whom any debt or sum of money is, or shall be due and payable to the crown, by process out of the court of *exchequer*, for, or in respect, or upon pretence of fees due to them, or any of them, for collecting or receiving the same, contrary to the true intent and meaning of this act; or if any of the officers or persons aforesaid, shall demand, take, and receive any sum or sums of money, whatsoever for not levying or forbearing to levy any debts, duties, or sums of money which are or shall be due to his majesty, his heirs and successors, and written out to them, or any of them, by the process aforesaid, in all and every such case, every person so offending, and thereof lawfully convicted, shall be adjudged, deemed, and taken to be guilty of extortion, injustice, and oppression; and all, and every such person and persons, being thereof lawfully convicted, shall forfeit for every such offence treble damages, and costs to the party grieved, and double the sum so extorted: all which damages and penalties shall be ordered, decreed, and given by the barons of the court of *exchequer*, upon complaint and proof of such extortion made and exhibited before them in such short and summary way and method as to them shall seem meet as aforesaid; provided such conviction be had and made within *two years after such offence committed*, and not otherwise. *s. 14, 15.* Provided that nothing in this act contained, shall be construed to deprive any sheriff of such poundage or allowance, as is allowed and given to them by virtue of this act, or of such poundage, allowance, or reward, as may hereafter be made, allowed

allowed, and given to them, or any of them by warrant or order from the lord high treasurer, or commissioners of the treasury, chancellor of the exchequer, or barons of the court of exchequer for the time being, for or in respect of any extraordinary service to the crown, that may happen to be performed by them or any of them: but that the said sheriffs, shall and may enjoy the full benefit and advantage of such poundage, allowance, and reward, without any impeachment or molestation whatsoever. *Sect. 15.*

That whatever orders or decrees shall be made by the barons of the court of exchequer, for costs, damages, and penalties, in the cases afore-mentioned or of any of them, or in any other case in this act hereafter mentioned, by virtue and in pursuance of this act, in such short and summary way and method, as is hereinbefore directed and prescribed, shall have the same effect, force and virtue, to all intents and purposes, as any other order or decree of the same court; and the same costs, damages and penalties, shall be raised, levied and obtained, by such process, ways, and methods, as are used in the said court, to enforce a compliance, with any other orders or decrees, of the same court. *Sect. 16.*

Poundage was allowed the sheriff out of 100 l. fine (imposed after conviction on indictment of battery in *K. B.*) levied upon a *fi. fa.* because the barons always make such allowance after monies paid there. *Skin. 12. pl. 13. 2 Jones. 185.*

vice to the crown performed by him.

All orders made by the barons of the exchequer; for costs, damages, or penalties by this act ordered in a summary way, to have the same force and effect as any other order or decree of the court; and such costs, &c. raised and levied by such process as is there used, to enforce a compliance with other orders or decrees.

Poundage was allowed out of 100 l. fine.

May retain poundage.

The sheriff may retain the poundage, without waiting for the allowance of it, upon his account, *Bunb. 305. Park. Rep. 177.*

Extendi Facias.

THE execution of this writ appears on the Return. inquisition hereto annexed.

Surry ss. An inquisition indented taken at *St. Margaret's Hill* in the borough of *Southwark*, in the county aforesaid, on the _____ day of _____

Inquisition on an *extendi facias*, in an ac-

K k 2

in

ion again^d the
devisees of a
will or bond.

On a levari fa-
cias you cannot
seize the land,
and deliver that
to the party by
the writ. Plowd.
441.

This is of course
though there is
no delivery.

in the 26th year of the reign of our sove-
reign lord George the third, king, defender of the
faith, &c. before *Wm. Esq.* Sheriff of the said
county, by virtue of the writ of our lord the king
to me directed, and to this inquisition annexed,
by the oath of *A. B.* and *C. D.* &c. twelve good
and lawful men of my bailiwick, who being sworn
and charged, say on their oath, that the two mes-
suages in the writ hereunto annexed, named, with
the appurtenances, are worth by the year in all is-
sues besides reprises 30 l. which said messuages
with the appurtenances, I the said Sheriff without
delay on the day of taking this inquisition, did de-
liver according to the true value of the same, to the
said *M.* and *S.* in the writ aforesaid named, as exe-
cutors aforesaid, to hold to the said *M.* and *S.* as ex-
ecutors as aforesaid, and their assigns as their free-
hold, until the debt and damages in the said writ
specified, and every part thereof they shall have
levied, if the said *M.* and *S.* in the said writ named
devisees as therein mentioned, or either of them
shall so long live, as by the said writ I am com-
manded and required. In witness, &c.

Inquiry.

The sheriffs
command by
this writ.

To summon a
jury

Oath to the fore-
man.

THIS writ is directed to the Sheriff of the
county where the action is laid, to enquire
by a jury what damages the plaintiff hath sustained
by means of the premises mentioned and recited
in the writ.

On this writ the Sheriff is to summon a jury of
12 men, who is to find such damages, and he re-
turns the writ and inquisition so found to the
court.

You shall well and truly inquire and assess the
damages between the parties, and a true verdict
give according to the evidence. *So help you God.*

The same oath the foreman hath taken on his part, you, and each of you shall well and truly observe and keep on your part. *So help you God.*

To the rest of the jury.

If a writ of inquiry issues upon confession of the action, in trespass for taking goods, the plaintiff need not prove property of the goods, but only the value. *Str.* 612.

What proof.

Defendant shall not give evidence of a fraud, for he has admitted the contract as stated. *Ibid.*

Fraud not to be given in evidence.

Nolo. 152. In *indebitatus assumpsit*, the plaintiff must prove his debt. *1 Vent.* 347.

But on promissory note or bill, need not prove the hand writing, but it should be produced to see if any money is indorsed as paid off. *3 Will.* 155.

Need not prove hand writing to bills or notes.

Str. 1149. So it was ruled, that if the plaintiff declare on any contract in writing made by defendant, the hand writing need not be proved on inquiry, for by the judgment he admits the contract as stated, but the contract must be produced.

Nor on any contract in writing declared on.

Executors or administrators shall not give in evidence that he has no assets. *Mod. Cas.* 308.

No assets.

The jury may give interest, on note, bill of exchange, and money lent. *Barnes*, 228. But not on ballance of account. *Ibid.*

Interest.

In an action on a policy on a foreign ship, when there is a stipulation that the policy shall be sufficient proof of interest, if there is judgment by default, the plaintiff on the writ of inquiry need only to prove the defendant's subscription to the policy without giving any evidence of interest. In this case defendant had underwritten, 300 l. and jury gave the whole without proof of the amount or value, or any evidence except the hand-writing of defendant to the policy. In cases where there is no necessity for a writ of inquiry, that proceeding is of use when the plaintiff goes for interest, which the jury assesses in the name of damages. *Thelluson v. Fletcher.* *Dougl.* 315.

Policy of insurance what need be proved.

Deputy to be under seal.

If a deputy is appointed to execute a writ of inquiry, it must be under the seal of office. *Barnes* 232. A verbal appointment bad, 413.

Inquest of office.

This is an inquest of office to inform the conscience of the court, who if they please may themselves assess the damages. 3 *Wils.* 61, 62. 2 *Wils.* 372, 374. 3 *Wils.* 175.

Adjournment.

The sheriff may adjourn the writ of enquiry for want of evidence. *Stra.* 1259. *Cas. K. B.* 571.

Inquisition on a writ of enquiry.

Surry (fs.) An inquisition indented, taken at the house of _____ called or known by the name or sign of _____ in the said county _____ on the _____ day of _____ in the 22d year of the reign of our sovereign lord *George* the third, by the grace of God of *Great Britain, France* and *Ireland*, king, defender of the faith, &c. before *A. B.* Esq. sheriff of the county aforesaid, by virtue of a writ of our said lord the king to the said sheriff directed, and to this inquisition annexed, to enquire of certain matters in the said writ specified by the oath of *A. B.* and *C. D.* &c. (here set out the names of the twelve jurors) honest and lawful men of the said county, who upon their oath say, that *E. F.* in the said writ named, hath sustained damages to the sum of 9*l.* 11*s.* 6*d.* by means in the said writ mentioned, besides his costs and charges about his suit in that behalf laid out, and for his costs and charges aforesaid, the sum of 20*s.* In witness whereof, as well I the said sheriff as the said jurors, have set our seals to this inquisition, the day and year above written.

The original right.

Return.

Indorse on the writ thus, The execution of this writ appears in the inquisition hereto annexed. The answer of.

Inquisition on a scire fieri inquiry to enquire whether the executor has committed a devastavit or not.

Oxon (fs.) An inquisition indented, &c. (as on a writ of inquiry as far as the jurors names) honest and lawful men of my bailiwick upon their oath say, that the said *J. B.* executor as aforesaid, had several goods and chattels which were of the said *J. W.* in the said writ mentioned at the time of his death in her hands to be administered, to the value of the damages aforesaid; which said goods and

and chattels, the said *J. B.* afterwards, and before the coming of the writ to this inquisition annexed to me, had eligned and wasted, and the money received, had converted and disposed thereof to her own proper use. In witness, &c.

The within named *J. B.* hath not any goods or chattels in my bailiwick, which belonged to the within named *J. W.* at the time of his death in her hands to be administered, whereof I can cause to be levied the damages within mentioned or any part thereof, as I am within commanded, or is she found in the same. The residue of the execution of this writ appears in the inquisition hereto annexed. The answer of.

The return to the writ.

An inquisition, &c. (as before) good and lawful men of my bailiwick upon their oath say, that there was due, and owing from the said defendant *A. B.* to the said *C. D.* for the rent aforesaid, at the time in the said *avowry* mentioned, and of the distress taken, the sum of 20*l.* and that the goods and chattels distrained as in the writ to this inquisition annexed, mentioned, according to the value thereof, are worth to be sold the sum of 1*l.* and they assess the damages of the said *C. D.* by means in the said writ mentioned, besides his costs and charges about his suit in that behalf laid out, to the sum of 20*l.* and his costs and charges aforesaid to the sum of 20*s.* In witness, &c.

Return to an enquiry in replevin, upon the Ca. 17 r. 2. c. 7.

When the goods are inanimate, say, "worth" so much if animate, of the price of 20*l.*"

An inquisition indented, taken at *Westminster-Hall*, in my county, in the great hall of pleas there, on, &c. before me, Sir *R. T.* knt. and *B. C.* esq. sheriff of the said county, in the presence of *Alexander Lord Loughborough*, his majesty's chief justice of his court of common bench, in the said place where the said court is usually holden there, on the oath of (the same as others).

Inquisition taken before the chief justice of the C. P.

It is laid down, that the sheriff is the judge on a writ of enquiry, and the judge his assistant, and the judge hath no judicial power. 12 Mod. 519.

610. Barnes 135.

K k 4

Of

Of Inquisitions.

What ought to
be returned.

THE sheriff in all his inquisitions taken and returned by him, must therein set down the certainty of the year, day, and place of taking the inquisition.

Return ought to
be certain.

If the writ appoints that the inquest shall be taken at a day or place certain, the sheriff must return, that it was taken the same day and place. *Fitz. Ret. 64.*

To make inqui-
ry of 12 men.

In every case the sheriff ought to make his enquiry by 12 men at the least; and when the jury have appeared, he must swear them, and then give them their charge, *scilicet*, to make enquiry according to the writ. *Dalt. 260.*

Sheriff may re-
turn the jurors
departed before
verdict.

And after the charge given, if any of the jury shall depart without giving up their verdict, the sheriff may return that the jurors were charged before him, and that afterwards such of the jury, or jurors departed in despite of the court without giving up their verdict; and such return is good, and an attachment will thereupon go out against the jurors. *Vide Thes. Brew. 5 Attach.*

And all inquisitions made by the sheriff must be by writing indented, and returned under the seal of the sheriff, and formerly was of every juror.

And if upon an inquisition any doubt shall arise &c. The sheriff may return, that he and the jury were in doubt, shewing wherein, and so pray the advice of the court thereon. *Vide Dalt. 260.*

Sealing of the
jurors now dis-
used.

But the sealing of the inquisitions on writs of enquiry now are disused by the jurors, because by the statute of 18 *Eliz. c. 14.* it is enacted, "That a verdict of 12 men or more, shall not be reversed for or by reason of any imperfect or insufficient return of any sheriff or other officer." And by *stat. 4 and 5 Ann. c. 16. s. 2.* It is enacted, "That from and after the first day of Trinity term

"term all the statutes of jeofails shall be extend-
 "ed to judgments which shall at any time after-
 "wards be entered upon confession, *nil dicit*, or
 " *non sum informatus*, in any court of record; and
 "no such judgment shall be reversed, nor any
 "judgment upon any writ of inquiry of damages,
 "executed thereon, be staid or reversed, for
 "or by reason of any imperfection, omission, de-
 "fect matter or thing whatsoever, which would
 "have been aided and cured by any of the said
 "statutes of jeofails, in case a verdict of 12 men
 "had been given in the said action or suit, so
 "as there be an original writ or bill, and warrant
 "of attorney duly filed, according to the law as
 "is now used."

Fieri Facias

I must refer the reader for the particulars re-
 specting the execution of this writ, to *folio 147.*
 and for the sheriffs fees 175, from common per-
 sons; from the king, *vide poundage an extent.*

To this writ the sheriff may return, *feri feci* to What sheriff
 the whole, or to part, and *nulla bona*, as to the re- may return.
 sidue.

Also *feri feci* and that they remain in his hands *Fi. feci:*
 for want of buyers.

That he hath sent to the bailiff of the liberty of *Mandavi ballivo;*
N. who hath execution and return of all writs and
 process therein, who hath answered him *feri feci*,
 or *nulla bona*, or that he has given no answer; or
feri feci to part, and *nulla bona* to the residue: or
 that *feri feci*, and they remain in his hands for
 want of buyers.

Fieri feci, part sold, and the residue remain, &c. *Fi. feci, and*
 for want of buyers. part sold.

Nulla bona and that the defendant is a beneficed *Nulla bona bene-*
 clerk, having no lay see, and rector of *A.* ficed clerk.

A

When sheriff
may make re-
turn of nulla
bona.

A *fi. fa.* was delivered to the sheriff the 5th of November 1753, who levied on the 8th, a commission of bankrupt issued against the defendant, and on the same day, a general assignment of his effects was made, on the 28th the sheriff made a bill of sale, and it appeared that the act of bankruptcy was committed the 4th, the sheriffs returned a *levy made*; and in an action of trover against the sheriffs lord *Mansfield* said, "The sheriffs had no authority to sell the goods of the plaintiffs, but of *John's* the bankrupt, they ought to have delivered them to the plaintiffs, the assignees. Upon the foundation of the legal right, the chancellor even in a summary way, would have ordered them to be delivered to the assignees.

"In this action, the injury complained of is the *wrongful conversion*. The assignment was made the 8th, and the sale not till the 28th, the return of the writ not till the octave of *St. Hilary* the sheriff acts at his peril, and is answerable for any mistake; infinite inconveniencies would arise, if it were not so.

"At the time of the sale and return, it was more notorious that these goods belonged to the plaintiffs than it could probably have been in the case of any third person; because commissioners of bankruptcy and proceedings under them, are public in the neighbourhood, and indeed all over the kingdom. The conversion was 20 days after the assignment. These defendants have made a direct false return, they might and ought to have returned *nulla bona*, which was the truth, for the goods were no doubt the assignee's, and the bankrupt could have none after the 4th, they would have justified the truth of the fact, if they had made this return, possibly the court might interfere if the sheriff was reasonably doubtful about the property; at least they would have given him time to make his return, or he might have put it on the parties concerned

“ concerned in interest, to litigate their right, by
 “ filing a bill, to oblige them to interplead, in or-
 “ der to ascertain to whom the property belonged,
 “ or he might oblige the assignees, to prove the
 “ act of bankruptcy and assignment.

“ The sheriff may take an indemnity from the
 “ plaintiff, in case there be a doubt concerning
 “ the property of the goods.” Judgment for the
 plaintiff. *Cooper and another assignees of John's v.*
Chitty and Blackiston sheriffs. 1 Burr. 20.

The plaintiff in *Trinity Term*, 1757 obtained judgment against the bankrupt in *C. P.* for 2000*l.* debt, and 6*l.* 10*s.* damages, 17th *June* a *fi. fa.* issued thereon into *Middlesex* returnable in three weeks of the Holy Trinity, which was the 26th of *June*. The sheriff on the 18th of same month took the goods to the value of 292*l.* 7*s.* and 5th *Nov.* returned *nulla bona*.

Upon a *fi. fa.* the sheriff returns *nulla bona*, the bankrupt lying in prison two months, and a commission issued.

The bankrupt was arrested 2d *May*, 1757, at the suit of the plaintiff, on the 4th of same *May*, he was charged with process out of the *C. P.* at the suit of *Solomons*, and on same day was brought by *ba. corp.* to Mr. Justice Clives chambers, who committed him to the *Fleet*. The bankrupt was a trader within the statutes, and remained in custody at the plaintiff's suit from the time of his first arrest, until the second of *July* following, on which day plaintiff discharged him out of custody as to his suit; but he continued as to *Solomons* until the 6th of *July*, on the 5th a commission issued, and he was declared bankrupt; on the 21st *July* his effects were assigned. *Question if the return be false.*

Lord Mansfield. “ The lying two months in
 “ prison is a strong presumption that the person
 “ was insolvent at the time of the arrest. So that
 “ here is plainly an act of bankruptcy upon the
 “ 1st of *May*, whatever dispute may be made about
 “ there being one upon the second, consequently
 “ the sheriff's return is true. If the sheriff had
 “ returned that he had levied, and had actually
 “ paid the money to the plaintiff on the 26th, he
 “ would

" would have been excused, because it was impos-
 " sible for him to know he would lie two months
 " in prison; and therefore he was under an in-
 " vincible ignorance of this event. But the
 " plaintiff could have had no advantage by this,
 " for still he would have been liable to refund the
 " money, although the sheriff might be excusable
 " in paying it to him."

Mr. Just. Foster. " If he had made the return
 " on the day of the writ, I cannot say, that would
 " have been a false return, because the relation is
 " made to be to the time of the first arrest, by the
 " express words of the statute."

Mr. Just. Wilmot. " The act is positive in
 " making the bankruptcy to commence from the
 " time of the first arrest."

" As to a return of this sort made on the 26th
 " of June, which was the day the writ was return-
 " able; I have some doubt about it, if that had
 " been the case. I am not so clear he could then
 " have returned *nulla bona*, because at that time
 " there was no act of bankruptcy: and it was
 " impossible for the sheriff to know, that there
 " would be one in future, by the man's lying two
 " months in prison, and thereby becoming a bank-
 " rupt relatively to the time of the first arrest."

" The return appears not actually made till
 " 5th November. And indeed if the sheriff had at
 " the very day of the return of the writ, returned,
 " that he had levied the money; and thereupon
 " immediately paid it over to the plaintiff, there
 " could be no sort of doubt, but that the assignees
 " might nevertheless have recovered it back from
 " the plaintiff. So that the plaintiff even in that
 " case could not have profited by such return."

*Coppindale v. Bridgen and another Sheriff of Middle-
 sex. 2. Burr. 814.*

If the goods of *A.* be seized on a *fi. fa.* against
A. and after the seizure *A.* becomes a bankrupt,
 this act of bankruptcy, cannot affect the goods le-
 vied in execution. *Ld. Raym. 724.*

If return had
 been made pre-
 vious to the time
 expiring, it would
 have been wrong
 to have returned
nulla bona.

If return on the
 day had been
 made of *feri feci*
 and the plaintiff
 paid.

A seizure of part of the goods in a house in the name of the whole, is a good seizure of all. *Cole v. Davies*, *Ld. Raym.* 724.

If two writs of *fi. facias* are delivered to the sheriff the same day, the sheriff is not to elect which he is to execute first, for he must execute that which came to his hands first. But if he levies by virtue of the *last* writ, and makes sale of them, (whether the *last* writ was delivered the same or the subsequent day) the property of the goods is bound by the sale, and the party cannot seize them by virtue of the first execution delivered; but he may have his remedy against the sheriff. *Small v. Cross, and Buckingham, Sheriffs of London.* 1. *Ld. Raym.* 252. Two writs.

If a writ of execution be delivered to the sheriff against *A.* and *H.* becomes a bankrupt before it be executed, the execution is superseded; and consequently the goods are not absolutely bound by the delivery of the writ to the sheriff. 2 *Vent.* 218. 3 *Lev.* 69, 191.

If a plaintiff cannot find sufficient effects of the defendant to satisfy his judgment, the court will order the sheriff to retain for the use of the plaintiff, the money which he hath levied in another action, at the suit of the defendant. *Armistead v. Philpot.* *Dougl.* 235.

If the goods seized to the value of the debt, he shall answer for the value to the plaintiff. *Mod. Caf.* 299. 1. *Salk.* 323.

Where goods were claimed under a bill of sale, the sheriff returned *nulla bona*, and the money was ordered to be brought into court by the sheriff, and the return to be made agreeable to the event of a trial of the validity of the bill of sale, after such validity tried in an action. 1 *Keb.* 905. *Rex v. Breen.*

The court will not stay goods taken by a *fi. fa.* in the hands of the sheriff, till a dispute between the plaintiff and a stranger concerning the property is decided, unless for the protection and at the request

quest of the sheriff. *Dougl. 1064. Shaw and Tunbridge.*

Trespass will lie against the sheriff for his bailiffs taking the goods of *A.* instead of *B.* 2 *Black. Rep. 832. Sanderson v. Martin.*

To a fieri facias nulla bona in debt.

The within named *C. D.* hath not any goods or chattels in my bailiwick, whereof I can cause to be levied the debt and damages within mentioned or any part thereof. The answer of.

To a fi. fa. in case.

The within named *C. D.* hath not any goods or chattels, in my bailiwick, whereof I can cause to be levied, the damages within mentioned, or any part thereof. The answer of.

Return of nulla bona against two defendants.

The within named *A. B.* and *C. D.* have not nor hath either of them any goods and chattels in my bailiwick whereof I can cause to be levied the debt and damages within mentioned, or any part thereof. The answer of.

Return of new sheriff where the late sheriff returns the levy, and he is gone out of office before the return of the writ.

If the late sheriff takes the defendant upon process, or levies upon goods in his time, and the present sheriff is called on to return the writ, such return is to be made in the name of the late sheriff; then the present sheriff indorses it under thus, This writ as above indorsed was delivered by the above named late sheriff, to me the undernamed now sheriff, at the time of his going out of office. The answer of.

Levy upon a fi. fa. in case to part, and nulla bona as to the residue.

By virtue of this writ to me directed, I have caused to be levied and made of the goods and chattels of the within named *C. D.* to the value of 40*l.* which money I have ready: and the within named *C. D.* hath not any other or more goods or chattels in my bailiwick, whereby I can cause to be levied the residue of the debt and damages within mentioned, or any part thereof, as within I am commanded.

If the landlord is paid return thus.

By virtue of this writ to me directed, I have levied and made of the goods and chattels of the within named *C. D.* to the value of 40*l.* and I further certify, that I have paid to *A. B.* the landlord of the premises, the sum of 20*l.* for half a year's

rent.

rent due to him at *Michaelmas* last, and the remaining sum of 20*l*. I have ready, as within I am commanded, and the said *C. D.* hath not any other or more goods or chattels in my bailiwick, whereof I can cause to be levied the debt and damages within mentioned, or any part thereof.

By virtue of this writ to me directed, I have levied and made of the goods and chattels of the within named *C. D.* to the value of 40*l*. as within I am commanded, which said goods and chattels remain in my hands unsold for want of buyers, therefore I cannot have the money before his majesty at the day and place within mentioned, as within I am commanded.

This writ came to me so late, that by reason of the shortness of the time, I could not make execution thereof, as within I am commanded.

The within named *C. D.* hath not any goods or chattels in my bailiwick, whereof I can cause to be levied the debt and damages within mentioned or any part thereof, as within I am commanded, and I further certify, that the said *C. D.* is a beneficed clerk, to wit, vicar of the parish, and parish church of *L.* in the county of *B.* and diocese of *L.*

If it is a rectory, say rector of the parish, and parish church of *A.* in the county of *B.* and diocese of *L.*

I humbly certify to the justices of our lord the king within mentioned, that by virtue of this writ to me directed, I have caused to be made of the goods and chattels of *G. K.* in the said writ named the sum of 262*l*. 12*s*. besides the sum of 56*l*. 3*s*. by me paid to *J. L.* one of the collectors of the excise of our lord the king that now is (which sum was due to our said lord the king, from the said *G. K.* for excise) and besides the sum of 23*l*. 14*s*. by me also paid to Mr. *B.* landlord of the premises for half a year's rent due to him at *Michaelmas* last, whereupon the said goods and chattels were found and seized according to the form of the statute in such

Fieri feci, and remain for want of buyers, &c.

Tarde.

Nulla bona, and that defendant is a beneficed clerk.

If a rectory.

Return of a fi. fa. where defendant was a bankrupt.

Vide, the cases stated whether it had not been better to return nulla bona, or applied to the court for advice, before this return made.

Return to a fi. fa. levy as to part, as to the residue that certain goods, &c. seized, were as pawns in the hands of the defendant.

Mandavi ballivo.

such case made and provided; and I further certify, that after raising the said three several sums of 262*l.* 10*s.* 56*l.* 3*s.* and after payment of the said two sums of 56*l.* 3*s.* and 23*l.* 14*s.* as aforesaid, and before the said sum of 262*l.* 12*s.* was by me paid to any person or persons, I had notice, that the said *G. K.* before the said writ came to me, became a bankrupt within the meaning of certain statutes made concerning bankrupts, wherefore I have hitherto detained in my hands the said sum of 262*l.* 12*s.* by me as aforesaid, caused to be made of the goods and chattels of the said *G. K.* and have the same sum ready to pay to *T. C.* and *W. O.* who have been chosen assignees of the estate and effects of the said *G. K.* bankrupt as aforesaid; and I further certify, that the said *G. K.* hath no other or more goods or chattels, within my bailiwick, whereby I can cause to be made any other or further sum of money by virtue of the said writ.

I have levied and made of the goods and chattels of *A. B.* in the writ to this schedule annexed named, to the value of 500*l.* and I certify that I have paid the sum of 15*l.* being the expences in levying the execution, and also to *Mr. C. D.* the landlord of the premises, the sum of 58*l.* for one year's rent, due to him at last, making together the sum of 73*l.* 12*s.* and the sum of 426*l.* being the residue of the said sum of 500*l.* I have ready. I also certify, that the within named *C. D.* is a pawn-broker, and that I seized divers goods and chattels which were deposited in his hands, as pawns of several persons to the value of 540*l.* which remain in my hands; and I further certify, that the within defendant hath not any other or more goods or chattels, in my bailiwick, whereof I can cause to be levied, the residue of the debt and damages within mentioned, or any part thereof, as within I am commanded.

I have sent to the bailiff of the liberty of *S.* to levy the within debt and damages, which said bailiff hath the full return of all writs and process within

within the same liberty, and the execution thereof: So that no execution of this writ, can be made by me, within the said liberty, which said bailiff hath not yet given me any answer thereto. The answer of.

Or thus, which said bailiff hath answered me thus, (here set forth his return and name.)

The within named *A. B.* hath not any goods or chattels, which were of the within named *C. D.* at the time of his death, whereby I can cause to be levied, the debt and damages within mentioned, or any part thereof.

Return to a fi. fa. against executor of nulla bona testatoris.

I have levied and made of the goods and chattels of the within named *C. D.* deceased, in the hands of *A. B.* executor, within mentioned, to the value of 50*l.* which money I have ready. The answer of.

Fieri feci.

I have levied and made of the goods and chattels which were of the within named *C. D.* at the time of his death, to the value of 50*l.* which money I have ready. The within named *A. B.* executor, &c. hath not any goods or chattels in my bailiwick, whereof I can cause to be levied, the sum of 6*l.* within mentioned, or any part thereof. The answer of.

To a fi. fa. against an executor where the levy is to be made of the goods of the testator, if he hath any in his hands, if not, then of the goods of executor.

The within named *B. W.* hath not any goods or chattels, which were of the within named *M. H.* at the time of his death in my bailiwick, in his hands to be administered, whereby I can cause to be levied the debt and damages within mentioned, or any part thereof. And I further certify, that divers goods and chattels, which were of the within named *M. H.* at the time of his death, came to the hands of the said *B. W.* after the death of the said *M. H.* to be administered, to the value of the debt and damages within mentioned; which said goods and chattels, the said *B. W.* executor, as aforesaid, hath eligned and waisted, and converted the same to his own use. *Thes. Brev. 117.*

Nulla bona to fi. fa. against an executor and a de-vassavit.

Sheriff to be cautious before he returns a *devastavit*.

The sheriff should be very cautious before he makes this return, unless indemnified, and the right way is to have a *scire fieri inquiry*, so as to have a jury, before he makes such return.

Sheriff may return *devastavit*.

If executors have wasted the goods of the testator, or have employed the same to their own use, the sheriff may return a *devastavit*.

Levy to be made of one executor.

If all the executors have nothing of the testators, yet upon the *fi. fa.* the sheriff is to make execution of that which is in the hands of that one executor. *Fitz. Ret. 55.*

Funeral charges and expences of proving the will, debts due to the king, on record, judgments docquetted, statutes and recognizances, are first to be paid, then simple contract debts.

Devastavit, what.

If an executor, or administrator, sell, embezzel, or convert to his own use, the goods of his testator, or intestate, before debts or legacies paid, it will be a *devastavit*.

If he pays that which he need not.

So if he pays that which need not be paid. *Vide Off. Ex. 226.* or pay a legacy, or a debt of an inferior nature, before another of a superior. *Ibid.*

If he disposes of the goods under value.
If he release.

So if he dispose of goods at an under-value. *Off. Ex. 227.* Though they are appraised. *Ibid.*
So, if he release an action to another, who took the goods of, or did a wrong to the testator, it will be a *devastavit* to the value of the goods, or damages. *Cro. Eliz. 43.*

If he pay debt on an usurious contract.

If he pay a debt upon an usurious contract. *Per. Yel. Noy. 129.*

If he agree with an executor, *de son tort*.

So, if he agree with the executor, *de son tort*, and accept his covenant for payment, it will be a *devastavit* for so much, though nothing be paid. *2 Jon. 88. Vide 1 Vern. 474.*

If he confesses actions, how chargeable.

So, if an executor, or administrator, has assets to 100 *l.* and is sued in two actions, and confesses judgment to 100 *l.* value in each, he shall be charged with 200 *l.* as if he had given bond for so much. *3 Lev. 115.* So, if he be sued upon bond and simple contract, and suffer judgment in both, without

without pleading the bond to the action upon simple contract, or the judgment in the action upon simple contract, to the action upon the bond, he shall be charged with both judgments, though he has assets only for one. 3 *Lev.* 114. 1 *Salk.* 310. 312. So, if he suffer judgment for principal and interest incurred since the death of the testator, it will be a *devastavit* for the interest. *R.* 2 *Lev.* 40.

But a receipt for so much due on bond as he receives, is not a *devastavit* for the residue. *Vide Off. Ex.* 228. Nor a parol agreement, that he will not sue for the penalty, *ibid.* Nor, a delivery into another hand, that it may not be sued. *Ibid.*

So, disposing of the goods of the testator to his use, is no *devastavit*; if he pays the debts of the testator to the value with his own money. 1 *Sand.* 307. So, if he pay a debt of an inferior nature with his own money, though it be to the value of the testator's goods in his hands, it will not be a *devastavit*. 1 *Sand.* 218.

So, if he compound an action of *trover* for the goods of the testator, and take a bond for the money to be paid at a future day, it is not a *devastavit*; but the money, for which the bond is taken, is assets immediately. 2 *Lev.* 189.

So, a release by an executor of full age, upon payment of principal and interest due upon a forfeited bond, is not a *devastavit*. *R. Cro. Car.* 491. *Vide ante.*

So, if there are arrears of rent on a lease of leasehold premises, and tenant becomes insolvent, and the administrator releases the arrears, and gives him a sum of money to quit possession; if it appears for the benefit of the estate, he shall be allowed both. *Blue v. Marshal*, 3 *P. W.* 381.

So a *devastavit*, by one executor does not charge his companion. *Off. Ex.* 232. *Dyer* 210. a.

So, if three administrators appoint a receiver, each administrator is liable only for what he himself receives. *Barnes* 440.

What is not a *devastavit*.

If he pay debts of inferior nature with his own money.

If he compound.

Release on bond forfeited.

If there are arrears of rent, and tenant insolvent.

Devast. by one.

Three adm. appoint a receiver.

Executor of executor shall not be charged by a *devastavit* made by the first.

So the executor of an executor, shall not be charged by a *devastavit* made by the first executor for it is personal. *R. 3 Leo. 241.* Though it be in the case of the king. *3 Leo. 241.*

Habeas Corpus.

Habeas corpus.

THERE are several writs of *habeas corpus*, to which the subject is intitled by common right, when he is deprived of his liberty. But the great and efficacious writ, in all manner of illegal confinement, is that of *habeas corpus ad subjiciendum*, directed to the person detaining another, and commanding him to produce the body of the prisoner, *with the day and cause of his caption and detention, ad faciendum, subjiciendum, & recipiendum*, to do, submit to, and receive, whatsoever the judge or court awarding such writ shall consider in that behalf. *State Trials*, vol. 8. 142.

To assert an absolute exemption from imprisonment in all cases, is inconsistent with every idea of law and political society, and in the end would destroy all civil liberty, by rendering its protection impossible; but the glory of the *English law* consists in clearly defining the times, the causes, and the extent, when, wherefore, and to what degree the imprisonment of the subject may be lawful. This it is which induces the absolute necessity of expressing upon every commitment, the reason for which it is made; that the court upon an *habeas corpus*, may examine into its validity; and according to the circumstance of the case may discharge, admit to bail, or remand the prisoner.

No *habeas corpus* lies for an enemy, prisoner of war, however ill used or deceived. *2 Black. Rep. 1324.*

Delays made originally in issuing and returning this writ.

Great delays were made in granting this writ, because the judges who had authority to issue it, pretended to have power either to grant, or deny it; not only that, but the party imprisoning was at

at liberty to delay his obedience to the first writ, and might wait till a second and third, called an *alias* and *pluries*, were issued, before he produced the party; and many other vexatious shifts were practised to detain prisoners in custody, particularly state prisoners. *State Trials*, vol. 7. 136:

This oppression gave birth to the famous *habeas corpus* act, 31 *Car. 2 c. 2.* which is frequently considered as another *magna charta* of the kingdom; and by consequence has also, in subsequent times, reduced the method of proceeding on these writs (*though not within the reach of that statute, but issuing merely at the common law*) to the true standard of law and liberty. 3 *Black. Com.* 135.

This statute has remedied every inconvenience the prisoner was subject to; for if not obeyed within a reasonable time, the officer or sheriff is subject to a large penalty, besides an attachment for his contempt of the court from whence it issued.

Attachment for not obeying it.

The writ of *habeas corpus ad faciendum & recipiendum*, which is commonly called a *habeas corpus cum causa*, “because it commands the sheriff, or person in whose custody he is, to bring him before the chief justice therein named, or in his absence, any other justice of the same court, together with the day and cause of his caption and detainer, to do and receive whatsoever shall be considered of him in that behalf;” who upon reading the causes returned, will of course commit him to the *King’s Bench* prison; but if he be already in custody, by virtue of a writ issued out of this court, he may have this writ in the first instance to go to that prison.

Ha. corp. cum causa.

This writ, in the fifth year of the reign of *Charles II.* could not be returnable immediately, or in the vacation, unless the party was in prison in *London* or *Middlesex*, or in order to deliver him over in discharge of his bail; but since the statute of *William III.* which gave liberty to a plaintiff (instead of bringing his prisoner to this court at the great expence of the writ of *habeas corpus ad respondendum*), to charge him with a declaration in

Formerly this writ could not be returnable immediately unless, &c. but now may.

prison; it has been determined, that in all civil suits, this writ may be had returnable immediately, before a judge at his chambers, and may now be sued out, without any previous motion made. *Vide 3 Burr. 1876.* And that if the sheriff, &c. do not obey it in convenient time, he will not only be subject to the penalties in the 31 Car. 2. but to an attachment for his contempt, that sort of punishment being the spirit of the act of parliament. *Vide 2 Burr. 854.*

**Habeas corpus,
ad testificandum.**

The *habeas corpus ad testificandum* is issued, where a witness is confined in prison, directed to the marshal, sheriff, &c. in order to bring him before the court where the cause is to be tried, to give evidence on the part of the person who sues it out; the sheriff returns this writ with the causes of detainer, and the keeper brings the body into court.

**Ha. corp. ad
satisfaciendum.**

The *habeas corpus ad satisfaciendum*, is directed to the same persons to bring the body into court, with the causes of his detainer, on a day certain named, therein to satisfy, or make satisfaction, to the plaintiff, the debt and damages stated therein, which being obeyed, the court commit him to the custody of the warden or marshal, as the writ directs.

**Writs of habeas
corpus within
three days after
service, to be re-
turned, and the
body brought, if
within 20 miles.**

By stat. 31 Car. 2. c. 2. s. 2. it is enacted, that whensoever any person shall bring any *habeas corpus*, directed unto any sheriff or gaoler, &c. or other person whatsoever, for any person in his custody, and the said writ shall be served on the said officer, or left at the gaol or prison with any of the under officers, under keepers, or deputies, shall within *three days after such service* thereof, (unless the commitment were for treason or felony, plainly and specially expressed in the warrant of commitment) upon payment or tender of the charges of bringing the said prisoner to be ascertained by the judge or court that awarded the same, and indorsed on the same writ, not exceeding 12d. per mile, and on security given by his

**Upon tender of
the charges to be
ascertained by
the judges, not
exceeding 12d.
per mile.**

own

own bond to pay the charges of carrying back the prisoner, if he should be remanded, and that he will not make any escape by the way, make return of such writ, and bring a cause to be brought, the body of the party so committed or detained, unto or before the lord chancellor, or the lord keeper, or the judges or barons of the court from which the said writ shall issue, or such other persons before whom the said writ is made returnable, according to the command thereof; and shall then likewise certify the true causes of his detainer or imprisonment, unless the commitment be in a place beyond twenty miles distance, &c. and if beyond the distance of twenty, and not above one hundred miles, then within the space of ten days; and if beyond the distance of one hundred miles, then within the space of twenty days. 31 Car.

Beyond 20 miles and not 100, 10 days to return, if beyond 100, then within 20 days.

2. c. 2. sect. 2.

“ That all such writs shall be marked in this manner, *per statutum tricesimo primo Caroli secundi regis*: and shall be signed by the person that awards the same, and if any person shall be, or stand committed or detained as aforesaid, for any crime, (unless for treason or felony, plainly expressed in the warrant of commitment) in the vacation time, it shall be lawful for such person so committed or detained, (other than persons convict, or in execution by legal process), or any one on his behalf, to complain to the lord chancellor, or lord keeper, or any justice of either bench, or baron of the *exchequer*, of the degree of the coif; and the said lord chancellor, &c. justice or baron on view of the copy of the warrant of the commitment or otherwise on oath that it was denied, are authorised and required, on request in writing, by such person, or any on his behalf, attested and subscribed by two witnesses who were present at the delivery of the same, to grant an *habeas corpus* under the seal of the court, whereof he shall be one of the judges,

Such writ how to be marked.

And if any person, &c. shall be committed.

In vacation time to complain, &c. &c.

Who is to grant an *habeas*.

Returnable immediately.

And the officer shall, within the said times.

Certify the true causes of the commitment.

After assizes proclaimed, no prisoner to be removed upon habeas corpus, but shall be brought before the judge of assize.

“ to be directed to the officer in whose custody the
 “ party shall be returnable *immediate*, before the
 “ said lord chancellor, &c. justice or baron, and
 “ on service thereof as aforesaid, the officer, &c.
 “ in whose custody the party is, shall within the
 “ times respectively before limited, bring him be-
 “ fore the said lord chancellor, &c. before whom
 “ the said writ is returnable, and in case of his
 “ absence, before any other of them, with the re-
 “ turn of such writ, and the true causes of the
 “ commitment and detainer; and thereupon with-
 “ in two days after the party shall be brought be-
 “ fore them, the said lord chancellor, &c. before
 “ whom the prisoner shall be brought as aforesaid,
 “ shall discharge the said prisoner from his im-
 “ prisonment, taking his recognizance, with one
 “ or more sureties, in any sum, according to their
 “ discretion, having regard to the quality of the
 “ prisoner, and nature of the offence, for his ap-
 “ pearance in the *King's-Bench* the term follow-
 “ ing, or in such other court where the offence
 “ is properly cognizable, as the case shall require;
 “ and then shall certify the said writ with the
 “ return thereof, and the recognizance into such
 “ court, unless it be made appear to the said lord
 “ chancellor, &c. that the party so committed is
 “ detained upon a legal process, order, or war-
 “ rant, out of some court that hath jurisdiction
 “ of criminal matters, or by some warrant sign-
 “ ed and sealed with the hand and seal of any of
 “ the said justices or barons, or some justice or
 “ justices of the peace, for such matters or of-
 “ fences, for the which by law the prisoner is
 “ not bailable.” *Sect. 3.*

“ That after the assizes proclaimed for that
 “ county where the prisoner is detained, no per-
 “ son shall be removed from the common gaol
 “ upon any *habeas corpus* granted in pursuance of
 “ this act, but, upon such *habeas corpus*, he shall
 “ be brought before the judge of assize in open
 “ court,

" court, who thereupon shall do what to justice
" shall appertain." *Sett.* 18.

" That if any officer, &c. shall neglect or re-
" fuse to make the returns aforesaid, or to bring
" the body or bodies of the prisoner or prisoners,
" according to the command of the said writ,
" within the respective times aforesaid, or upon
" demand made by the prisoner or person in his
" behalf, shall refuse to deliver, or, within the
" space of six hours after demand, shall not de-
" liver to the person so demanding, a true copy
" of the warrant or warrants of commitment and
" detainer of such prisoner, which he and they
" are hereby required to deliver accordingly, all
" and every the head gaolers and keepers of such
" prisons, and such other person in whose custo-
" dy the prisoner shall be detained, shall for the
" first offence forfeit to the prisoner or party
" grieved, the sum of 100 l. and for the second
" offence the sum of 200 l. and shall, and is here-
" by made incapable to hold or execute his said
" office." *Sett.* 5.

Officers how to
be proceeded
against, for not
obeying such
writs.

As the gaoler, &c. is obliged to bring up the
prisoner at the day prefixed by the writ, it is no
excuse for not obeying of a writ of *habeas corpus ad*
satisfaciendum, that the prisoner did not tender his
fees due to the gaoler; nor yet is the want of such
tender an excuse for not obeying a writ of *habeas*
corpus ad faciendum et recipiendum; but if the gaol-
er bring up the prisoner by virtue of such *habeas*
corpus, the court will not turn him over till the
gaoler be paid all his fees. 2 *Jon.* 178. *March* 89.
Keb. 272, 280. 2. *Show.* 172. *pl.* 165.

No excuse for
sheriff or gaoler,
that he is not
paid.

A *habeas corpus* was awarded to the sheriff of
who before the return leaves the office;
and a new sheriff is made, who returns *languidus*;
this return is not good, but it ought to be return-
ed by them two, the first that he had the body,
and delivered it to the new sheriff, and the new
sheriff may return *languidus*. *Pasch.* 26 *Car.* 2.
3 *New Abr.* 10.

A ha. corp.
awarded to the
sheriff, who be-
fore the return
leaves the office,
and a new she-
riff is made, who
returns it, lan-
guidus, not good
for it ought to
be returned by
both.

As

The sheriff is to make a certain return.

As upon the return of the writ the court is to judge, whether the cause of the commitment and detainer, be according to law or against it; so the officer or party, in whose custody the prisoner is, must, according to the command of the writ, certify on the return thereof the day, and, also the causes depending against him, and in *extra-judicial commitments*, the warrant of commitment ought to be returned, as also every writ of execution in *hæc verba*, and with a *paratum habeo*, that the judge may either discharge, bail, or remand the prisoner, 2 *Nelf. Abr.* 915. 2 *Cro.* 543. 5 *Mod.* 156. 2 *Lil. Abr.* 2.

What ought to appear.

It is said in general, that upon the return of the *babeas corpus* the cause of the imprisonment ought to appear as specifically and certainly to the judges before whom it is returned, as it did to the court or person authorised to commit. *Vaugh.* 137.

If commitment be against law, the court ought to discharge defendant.

For if the commitment be against law, as being made by one who had no jurisdiction of the cause, or for a matter for which by law no man ought to be punished, the court are to discharge him, and therefore the certainty of the commitment ought to appear; and the commitment is liable to the same objection where the cause is so loosely set forth, that the court cannot adjudge whether it were a reasonable ground of imprisonment or not. *Ha. P. C.* 584. *Skin.* 676. *pl.* 2. 12 *Co.* 130.

Excom. capiend. ought to be set forth at large.

If a person in custody on an *excommunicato capiend.*, brings a *babeas corpus*, the writ of *excommunicato capiend.* itself must be returned, as well as the sheriff's warrant for taking him, because the warrant may be wrong, when the writ is right; and though the warrant be wrong, yet if the writ is right, the party is rightfully in custody of the sheriff. *Salk.* 350. *pl.* 7.

Return to a ha. corp. to bring up the body with the cause.

Oxfordshire } I G. B. Esq. sheriff of the said county to wit. } ty, do humbly certify, and return to the right honourable *William Earl of Mansfield*, chief justice in the writ to this schedule annexed, that

that before the said writ came to me (that is to say) on the day of in the 22d year of the reign of his present majesty king George the third, *C. D.* in the said writ named, was taken, and in his majesty's gaol for the said county, under my custody is detained by virtue of his majesty's writ of *latitat* against him by the name of *C. D.* to answer *A. B.* in a plea of trespass, and also to a bill of the said *A. B.* against the said *C. D.* for 100*l.* upon promises, according, &c. to be exhibited returnable before the king at *Westminster*, on *Wednesday* next after the morrow of *All Souls*. Witness *William Earl of Mansfield*, at *Westminster*, the 19th day of *June*, in the 22d year of his present majesty's reign.

Stormont and Way.

Oath for 50*l.* and upwards,

A. K. attorney, 9th Sept. 1782.

The said *C. D.* is also detained under my custody by virtue of a writ of *capias ad satisfaciendum*, the tenor of which said writ follows in these words (to wit) George the third, &c. (here set forth the writ *verbatim*, attorney's name, and the indorsement) then say, And these are the causes of the taking and detaining the said *C. D.* which together with his body I have ready, as by the said writ I am commanded.

Detained also on a ca. sa.

Indorse on the writ thus, "The execution of this writ appears in the schedule hereto annexed."

Return to the writ to be indorsed thereon.

The answer of *G. B.* Esq. sheriff.

Oxfordshire } *J. P.* Esq. sheriff of the county afore-
to wit. } said, do humbly certify, and return to the right honourable *William Earl of Mansfield*, the chief justice in the writ to this schedule annexed named, that before the said writ came to me (that is to say) on the day of in the 22d year of the reign of his present majesty, king George the third, the said *C. D.* in the said writ named, was taken by *G. H.* Esq. then sheriff of the said county, and in his majesty's gaol for the
said

Another where defendant was in custody of the late sheriff, and this writ returned by the present.

said county, was detained by virtue of his majesty's writ of *latitat*, issued against him, by the name of *C. D.* to answer *A. B.* in a plea of trespass, and also to a bill of the said *A. B.* to be exhibited against the said *C. D.* for 100*l.* upon promises, according, &c. returnable before the king at *Westminster*, on *Wednesday* next, after fifteen days from the day of *Easter*. Witness *William Earl of Mansfield*, at *Westminster*, the 12th day of *February*, in the 22d year of his present majesty's reign.

Stormant and Way. Oath for 50*l.*

S. K. attorney, 24th *Feb.* 1782.

And that by indentures duly executed, bearing date the day of in the year aforesaid, made between the said *G. H.* Esq. then late sheriff of the said county of the one part, and the said *J. P.* then and now sheriff of the said county of the other part, the said *C. D.* was delivered to me the said present sheriff, by the aforesaid late sheriff at the time of his going out of his office, charged with the cause aforesaid; he is also detained under my custody, by virtue of a writ of *capias*, returnable before the king's justices at *Westminster*, on the morrow of *All Souls*, to answer *J. B.* in a plea of trespass on the case on promises to the said *John*, his damage of 50*l.* Oath for 10*l.* and upwards, *B. L.* attorney. And these are the causes of taking and detaining the said *C. D.* whose body I have ready, as by the said writ I am commanded,

Warrant to the
gaoler, to con-
duct the body
before the chief
justice.

Oxfordshire } *J. B.* Esq. sheriff of the said county,
to wit. } to *C. S.* my bailiff, and also keeper
of his majesty's gaol or prison in and for the said
county, by virtue of his majesty's writ to me di-
rected, I command you, that you have the body
of *J. K.* before *William Earl of Mansfield*, chief
justice, assigned to hold pleas, &c. at his cham-
bers in *Serjeant's Inn*, *Chancery lane*, *London*, im-
mediately after the receipt of this your warrant, to
do and receive what the king's chief justice shall
then and there consider of him in this behalf; here-

of fail not, as you will answer at your peril,
Given under my hand and seal of office, this
day of 178 By the same sheriff.

Borough of Swansea, in the county of Glamorgan
(to wit.) We *Gabriel Powell*, Esq. steward of the
court of pleas of our sovereign lord the king, held
in and for the said borough, and *Rowland Pritchard*,
Esq. portreeve of the said borough, and court
aforesaid, do humbly certify, unto *William Earl of*
Mansfield, chief justice, assigned to hold pleas in his
majesty's court before the king himself, that be-
fore the coming of this writ to us directed, and to
this schedule annexed, *J. B.* in the said writ
named, was taken and detained under our custody,
by virtue of a writ of *capias ad respondendum*, issued
out of the said court of pleas, held in and for the
said borough, against him, by the name of *J. B.*
to answer *C. D.* of a plea wherefore, that he, with
force and arms, the close of the said *C.* at *Swansea*,
did break, and other injuries to him did, to his great
damage, and against his majesty's peace. And also
to answer the said *C.* according to the custom of the
same court, of a plea of debt, to the damage of the
said *C.* of 120*l.* Witness *Gabriel Powell*, Esq.
steward, and *Rowland Pritchard*, Esq. portreeve,
the 24th day of *November*, in the 24th year of his
present majesty's reign.

Return of ha.
corp. from a
steward and port-
reeve of a bo-
rough, where
bail was given
after an interlo-
cutory judgment
for the plaintiff
levied in that
court.

Take bail for 60*l.* per affidavit,

filed. *Gab. Jeffereys*, deputy *Gab. Powell*.

recorder.

Row. Pritchard.

To which said writ the said *J. B.* hath put in
special bail, and the said *C. D.* hath declared
against him, in a plea of trespass on the case, to
his damage of 100*l.* And at a court holden in
and for the said borough on *Monday* the 26th day
of *January* 1784, in the *Guildhall* of the said bo-
rough, the said *C. D.* obtained an interlocutory
judgment against the said *J. B.* for want of a plea,
and so the said plea remains in the said court un-
determined.

And

And this is the only cause of taking and detaining the said *J. B.* in the said writ to this schedule annexed named, which, together with his body, we have ready, as by the said writ we are required. The answer of.

Gab. Powell, steward.

Row. Pritchard, portreeve.

Return on writ.

The execution of this writ appears in the schedule hereunto annexed. The answer of.

Gab. Powell, steward.

Row. Pritchard, portreeve.

Return to a *habeas corp. ad satisf.* in the late riots by the warden of the fleet.

The *Fleet* } I the within named warden of the
to wit. } prison of our lord the king of the
Fleet, do most humbly certify and return, that before the coming of the within writ to me directed, to wit on the 7th day of *June* in the year of our Lord 1780, the said prison having been destroyed by fire, which I could not prevent, and the prisoners lately confined in the said prison being now at large (amongst which the said *S. H.* within named is one) therefore the body of the within named *S. H.* before the barons of the king's court of Exchequer within mentioned, at the day within written, I cannot have, as I am within commanded.

Return to writ.

The execution of this writ appears in the schedule annexed. The answer of.

Party dead, a good return.

Upon a *habeas corpus cum causa*, it is a good return, that the party is dead. *Bro. Ret.* 125.

Sheriff to return the truth.

If a man be condemned in any court, and his body taken in execution and then he procures any writ to the sheriff to remove his body, &c. the sheriff upon such writ, ought not only to return the *truth*, or *cause* of the *condemnation*, viz. that his prisoner is condemned by judgment, or in execution, that so at the last the prisoner may be remanded; for he shall not be let to mainprize, but be sent back to prison, there to remain until he hath satisfied the plaintiff. *Fitz.* 251. 2 *H.* 5. c. 2. But also the sheriff ought to bring in the body at the day, and according to the writ. *Dalt.* 253.

To

To this writ the sheriff may return *cepi and languidus* so that. he could not have the body without danger and peril of his life. *Lib. Intr. 190. Kitch. 258. Dalt. 250.*

May return *cepi*, and *languidus*.

Also may return him in custody for *felony, murder, treason, or the like.* *Dalt. 252. Outlawed, excommunicated, or committed by a mittimus from a justice,* in these cases set forth the warrant *in hæc verba. Officin. Brev. 235.* or by an order of sessions.

Imprisonment for felony, &c.

By stat. 21 Jac. 1. c. 23. Where the judge of an inferior court is an utter barrister of three years standing at the bar, no cause shall be removed from thence by *habeas corpus* or other writ, except it be delivered before issue, or demurrer joined in the said cause, so as the said issue or demurrer be not joined within six weeks next after the arrest or appearance of the defendant to such action.

No cause shall be removed by *ha. corp.* except it be delivered before issue, &c. joined, so as it be not joined 6 weeks next after arrest, &c.

London, } We *R. O. Esq.* and *Sir W. L. knight,*
to wit. } Sheriffs of the city aforesaid do certify to *Sir William De Grey knight,* his majesty's chief justice of his court of Common Pleas in the writ to this schedule annexed named that before the said writ came to us (that is to say) that by virtue of an act of parliament made in the parliament holden at *Westminster* in the 21st year of the reign of our sovereign late *Lord James* the first late king of *England, &c.* intituled, an act for avoiding of vexatious delays caused by removing actions and suits of inferior courts, amongst other things it is enacted in the *English* words following (that is to say) Be it enacted (to the end of the second section) And we further certify that after making the act aforesaid and the end of the said session of parliament (that is to say) on the 5th day of *March* in the 13th year of the reign of our sovereign lord the king that now is in the said writ named was taken at *London* aforesaid, and in the prison of his present majesty under custody of us the above named sheriffs was detained by virtue of a certain plaint in the court of our sovereign lord the king that now is held before *R. O. Esq.* one of the sheriffs of the

Return of *hab. corpus*, pursuant to the act. 21 Ja. 1. c. 23.

Return of Writs.

said city on the said 5th day of *March* in the thirteenth year abovesaid levied against him by the name of _____ at _____ in a plea of trespass on the case. *Dam.* 30 *l.* which said _____ afterwards to wit on the same 5th day of *March* in the year abovesaid found security, and was bailed by _____, of, *Esq.* gentleman, and _____, of, *Esq.* merchant to have the body of the abovesaid _____, at the next court of our sovereign lord the king that now is to be holden before the said *R. O. Esq.* one of the sheriffs of the said city on *Saturday* the 6th day of *March* in the thirteenth year abovesaid to answer the said _____, in the plea of her plaint abovesaid, and from thence forward from court to court until the end of that plea, and the same day was given to the parties abovesaid to be there, &c. At which said next court of our sovereign lord the king that now is before the said *R. O. Esq.* one of the sheriffs as abovesaid as well the said _____, as the said _____, appeared in their proper persons and then and there the said _____, did put in her place _____, her attorney against the said _____, and the said _____, did put in his place *C. F.* his attorney at the suit of the said _____, in the plea of her plaint abovesaid and afterwards to wit at the court of our said sovereign lord the king that now is, held before the said *R. O. Esq.* one of the sheriffs of the city abovesaid, on *Thursday* the 20th day of *March* in the thirteenth year abovesaid the said _____, by *R. B.* her attorney abovesaid declared in and upon her plaint abovesaid against the said _____, and afterwards to wit on the thirteenth day of *May* in the thirteenth year abovesaid the said _____ by the said *C. F.* his attorney pleaded to the declaration abovesaid and then and there issue was joined between the said parties as by the record and proceedings thereupon remaining in the said court of our sovereign lord the king that now is before me the said *R. O.*

Return of Writs.

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R. O. Esq. one of the sheriffs of the city aforesaid more fully appears, and we further certify that *W. L. Esq.* being an utter barrister, and of standing at the bar by the space of three years, and now of one of the four inns of court, to wit of *Lincolns Inn* then was the assistant of me the said *R. O. Esq.* one of the sheriffs aforesaid, and from thence forward hitherto hath been and now is the judge of the said court, of our said sovereign lord the king that now is of record, and that the cause of action of the aforesaid *John Eyles*, against the said *A. B.*, accrued at *London* aforesaid (that is to say) in the parish of *St. Christopher*, within the jurisdiction of the said court. And we further certify, that in the same parliament, it is enacted in the *English* words following (that is to say,) And be it enacted by the authority aforesaid, that if any writ or writs whatsoever shall be after the end of this present session of parliament, granted or sued forth or out of any of his majesty's said courts at *Westminster*, or the court of the great sessions in *Wales*, or other court contrary to the intent and meaning of this present act; that then, it shall and may be lawful to, and for the judge or judges, and officer or officers to whom such writ or writs shall be directed or delivered, to disallow and refuse the same, and to proceed as if no such writ or writs had been granted or sued out or forth as aforesaid, any law, statute, usage, custom, or restraint to the contrary in any wise notwithstanding; and this is the cause why we have refused to allow the writ to this schedule annexed, and have not the body of the aforesaid *John Eyles* ready before the chief justice aforesaid.

The execution of this writ appears in a certain schedule hereto annexed. The answer of.

I *John Eyles*, Esq. warden of the prison of our lord the king, of the *Fleet*; To the justices of the lord the king within written, most humbly certify and return, that before the coming of this writ to me directed, the within named *A. B.* by force and

M m

arms,

Return of writs.

Return to a ha. corp. out of the crown office, that the prisoner escaped.

arms, broke the said prison, and out of my custody, without any leave, and against my will, escaped and fled to places to me unknown, and is not yet brought back or retaken; and for that cause, the body of the said *A. B.* before the justices of the lord the king within written, at the day and place within contained, I cannot have, as is to me within commanded. The answer of *J. Eyles*, Esq.

Ha. corp. ad testificandum, sheriff to return, &c.

A *habeas corpus ad testificandum*, is returned with all the causes against the defendant, in the same manner as an *habeas corpus cum causa*, and the gaoler's man attends with him.

If prisoner in execution.

So is the *habeas corpus ad satisfaciendum*.

It has been doubted on a writ of *habeas corpus ad testificandum*, whether a prisoner in execution can be brought up to give evidence, without being liable to an action for an escape.

Habere Facias Possessionem.

FOR particulars concerning this writ, and of the writ of *habere facias seisinam*, Vide p. 176. to 180.

What sheriff may return.

To this writ, the sheriff may return, that he has given full and quiet possession of the premises in the writ mentioned to the plaintiff, *John Doe*.

Always ready to deliver.

That he was always ready to deliver possession, and appointed divers times for the plaintiff to come and receive the same from him; at which time, he was there ready to deliver him the possession, but that no one came on the plaintiff's behalf, to receive it. *Dalt.* 539. *Roll.* 459. *Floyd v. Bethell.*

Title Return.

No such land not good.

But it is no good return, that there is no such land. 5 *H.* 7. 27.

Offered to give possession.

The sheriff may return, that he offered to the demandant possession, but he refused to take it. *Dyer.* 278.

That the sheriff was tenant to the land, and therefore he could not serve the writ. *Br. Ret.* Sheriff was tenant.

46.

But where the tenant doth not well know the land demanded, he may pray the view, so that he may be shewed which is the land demanded. And the sheriff is not bound to know, or to seek the land demanded; and therefore, except the demandant shews it to him, he may make his return accordingly.

Tenant not knowing the land, may pray the view for sheriff, not bound to know, or seek the land.

When the sheriff makes the view, he ought to warn the tenants and veyors; for otherwise the tenants shall not know when the sheriff makes the view. And the sheriff, and veyors, must go to the tenements demanded, &c. And the sheriff must have with him *six* at the least of the jury to take the view. *Co. Litt.* 158. *Dalt.* 256. *lib. Intr.* 686.

When sheriff makes the view, he ought to warn the tenants.

Where part of a manor, or the like is in demand, the view shall be of the whole. *11 H. 4. Bro. View.* 39. So where a moiety or third part of house or land is only in demand, yet the whole shall be put in view. *Ibid.* 46. 71.

Where part of a manor is in demand.

The sheriff may return, that he was ready to make the view, and that neither the tenant, nor any for him came to the view. *Fitz. View.* 126.

May return ready, to make view.

By virtue of this writ to me directed, I did on the day of in the year within written, give full and peaceable possession unto the within named *John Doe*, of the messuages, lands and premisses with the appurtenances within mentioned, as within I am commanded. The answer of.

Return to hab. fac. poss. of full possession being given.

Add this, and the within named *C. D.* hath not any goods or chattels in my bailiwick, whereof I can cause to be levied the damages and costs within mentioned, or any part thereof.

If a *fi. fa.* is annexed, and no goods.

I have levied and made of the goods and chattels of the within named *C. D.* to the value of 20*l.* being the damages and costs within mentioned, which money I have ready.

If a levy of goods.

M m 2

By

Return no one came to shew or receive possession of the premises.

By virtue of this writ to me directed, I have been always ready and willing to deliver the possession of the premises within mentioned, to the within named *John Doe*, with the appurtenances, as I am commanded. But that no one came to me on the part of the said *John Doe*, to shew the same premises to me, or any part thereof, or to receive the possession thereof, or any part thereof, from me. The answer of.

For a return to a *habere facias seisinam*. Vide *Dower*.

Latitat.

The return to this writ, is either *cepi corpus*, or *non est inventus*. *Lib. Intr.* 109. c. 166. d. *mandavi ballivo, languidus*, and that defendant is a member of parliament, or bankrupt within the *forty two days*, allowed for his surrender or *rescous*.

Levari Facias.

Leva. fac.

FOR the particular execution of this writ, see *fo.* 161.

What is a good return.

On this writ, the sheriff returned, that he levied 10 *l.* of the sum, &c. the which he hath delivered to the party, this seems to be a good return, and upon this return, the party may sue a *sicut alias levari facias*, directed to the sheriff, to levy the residue. *Dalt.* 260.

To be levied of the profits of the land.

This writ is only to be levied upon the profits of the land, and upon the goods of him that hath forfeited a recognizance, &c. *Reg. Orig.* 298. 300. But the sheriff cannot seize the land, and deliver that to the party. *Plow.* 441.

Nulla bona.

The within named *A. B.* hath not any goods, chattels or rents in my bailiwick, where or by which I can cause to be levied the debt within mentioned, or any part thereof, as within I am commanded.

Cepi.

I have taken into the hands of the lord the king, a certain inn, with three shops, (in such a place) of

of the within named *J. S.* which are of the annual value of 10*l.* besides reprises; and that the aforesaid inn, with the shops aforesaid, remain in my custody, until I have another command. *Dalt.* 260.

Lunacy.

THE commission being obtained, you appoint a place for the execution thereof, which ought to be near the place of the supposed lunatic's abode; a precept is then sent to the sheriff, to summon a jury of *twenty four men*; who immediately issues his summons to his bailiff for that purpose, the summons contains in substance the precept.

The sheriff attends this commission, as well as his officer who summoned the jury, and the following oath is administered by the sheriff to the jury.

You shall well and truly inquire of all such matters and things as shall be given you in charge, by virtue of his majesty's commission now to you read, and a true verdict give, according to the evidence that shall be produced.

The oath to be administered to the foreman.

So help you God.

The same oath that your foreman hath taken before you on his part, you and each of you, shall well and truly observe and keep on your parts.

Form of the oath to be administered to the other jurors.

So help you God.

The sheriff returns the precept of the commissioners adding a panel of the jurors thereto.

The execution of this precept appears in a certain panel hereto annexed. The answer of. Return.

The commissioners return the commission.

This writ is used for the delivery of goods, &c. *Liberate.* on an *extent*; and by the *extent*, the conusee of a recognizance hath not any absolute interest in the goods, until the *liberate*. 2 *Lill.* 169. This

writ is to be sued on a statute staple, on a recognizance, before there can be a delivery in execution. 3 *Salk.* 159.

Return of liberate, after an extent on bond.

By virtue of this writ to me directed, on the day of _____ in the year within written, I have delivered to the within named, *L. S.* the manor, lands, and tenements within specified, with the appurtenances, to hold to him and his assigns, as his free tenement, until the debt within mentioned, with the damages and costs, are fully paid and satisfied, as I am within commanded; and the within named *J. S.* is not found in my bailiwick. The answer of. *Lib. Intr.* 598. *Dalt.* 261. 233.

Parliament.

Precept and return of writ of summons, *p.* 295, 296. Sheriff's return, 295.

Cepi corpus to a ne exeat regno.

I have caused the within named *N. B.* personally to come before me, and he found bail in the penalty of 600 *l.* according to the command of the within writ. The answer.

Pone.

Return to a writ of *pone*, *vide p.* 240. and return of summoned, *p.* 215.

Proclamation.

Return to a writ of proclamation on an *exigent*, *p.* 489.

To a proclamation in chancery.

I have caused proclamation to be made, as within I am commanded; and I further certify, that the within named *C. D.* is not found in my bailiwick. The answer of.

Cepi upon a proclamation out of chancery, and detained on other writs, so that he could not have the body without a *ha. corp. cum causa*.

I have caused proclamation to be made, as within I am commanded, and I have by virtue of this writ, taken the body of the within named *C. D.* and him in the prison of the lord the king of *N.* under my custody, have caused to be safely kept, but because the aforesaid *C. D.* is also detained in my custody, by virtue of divers other causes, at the suit of divers other persons; therefore I cannot have his body at the day and place within contained, as within I am commanded, without the writ of the lord the king, to have the body of the said *C. D.* together with the day, and cause

cause of his being taken and detained, to me in this behalf directed.

The defendant must be summoned by the sheriff, *Quare impedit*, and it may be made in the church, or to the person.

The sheriff may return, *tarde*. *New Ret. Brev.* *Tarde*. 409.

Also he may return *nihil* upon the summons, *Nihil*, and upon the *attachment* and *distringas*. *Ibid*.

Upon a writ of summons, in *a quid juris clamat*, In a *quid juris clamat*, the sheriff is to return the party summoned, in this or the like manner.

Summoners are $\left. \begin{array}{l} E. F. \\ J. S. \\ J. D. \end{array} \right\}$

The answer of J. K. Esq. sheriff.

Return to a writ of *recordari facias loquelam*, *vide* Record. fac. lo-
p. 214. que.

Rescue, returned by several, p. 221. and by the defendant himself, p. 222. *Rescue*.

By virtue of this writ to me directed, immediately after the receipt of this writ, I restored and put into full and peaceable possession, the messuages and land with the appurtenances, unto the within named *A. B.* as within I am commanded. *Return to a writ of restitution.*
Greenw. 229. officin. brev. 224

The sheriff upon this writ, is only to warn the party to appear (before the justices, &c.) according to the writ, and then to return the same: But such warning is to be by *summons*, which is directed to the bailiff, to give knowledge to the defendant, that he appear at such a man's suit, in such a court, at a certain day, there to do that which the writ requires. *Scire facias*.

He may return *nihil*, *tarde*, or that the party is dead: *Lib. Intr. 458. Br. 125.* or summoned. *What sheriff may return.*
But he ought to return the *real names* of the *summoners*.

The within named *A. B.* hath not any thing in my bailiwick, where or by which I can give him notice, as within I am commanded, or is the said *A. B.* found in the same. *Nihil to sci. fa.*

Nihil to two defendants.

The within named *A. B.* and *C. D.* have not, or hath either of them, any thing in my bailiwick, where or by which I can give them, or either of them notice, as within I am commanded, nor are they, or is either of them found in the same. The answer of.

Summonire fecit.

By virtue of this writ to me directed, by *W. D.* and *J. K.* good and lawful men of my bailiwick, I have given notice to the within named *C. D.* to be and appear before the lord the king on the day, and at the place within mentioned, to shew, &c. as within I am commanded. The answer of.

Summons to one and nihil to the other.

By virtue, &c. I have given notice to the within named *A. B.* to be, and appear before the lord the king, on the day and at the place to shew, &c. as within I am commanded. The within named *C. D.* hath not any thing in my bailiwick, where or by which I can give him notice, as within I am commanded, or is he found in the same. The answer of.

That defendant died.

Before this writ came to me, the within named *A. B.* died; therefore I cannot make known to him, as within I am commanded.

Return to scire fac. against the heirs or tenants. Nihil.

There are not any heirs or tenants of the lands or tenements, whereof the within named *C. D.* was seized at the time of the rendition of the judgment within mentioned in my bailiwick, or ever after, whereby I can give notice to them, or either of them, as within I am commanded.

Return of notice to the tenant.

By virtue of this writ to me directed, I have given notice by *J. D.* and *J. H.* good and lawful men of my bailiwick, to *J. K.* tenant of 15 messuages, and 100 acres of land, with the appurtenances, situate, lying and being in the parish of *A.* in my bailiwick, which were the lands and tenements of *J. K.* at the time of the rendition of the judgment within mentioned, to be and appear at the time and place within mentioned, to shew in manner as within mentioned, and as within I am commanded.

If no heirs or tenants, then return thus.

If the writ be directed, to give notice to the heirs and tenants of the lands, then add, if they

are not in the bailiwick. There are not any heirs or tenants of the lands or tenements, whereof the said *A. K.* was seised at the time of the rendition of the judgment within mentioned, in my bailiwick, or ever after, whereof I can give notice to them or either of them, as within I am commanded.

The within named *C. D.* executor, within mentioned, hath not any thing in my bailiwick, where or by which, &c.

Nulla bona
against an execu-
tor, &c.

The within named *A. B.* administrator, within mentioned hath not any thing in my bailiwick, where or by which, &c.

Against admi-
nistrator.

To this writ the sheriff may return a *mandavi ballivo*. *Rast. Entr.* 237.

Mandavi ballivo.

The within named *A. B.* and *C. D.* bail of the within named *G. H.* have not, nor hath either of them any thing in my bailiwick, &c.

To a sci. fa.
against bail nihil.

Scire fieri enquiry, for this return and inquisition, see p. 502.

Sci fi. enq.

For this return to this writ. *Vide Dower*, p. 464. and the mode of executing same. p. 176.

Hab. fac. seisin.

Summoners are, } *John Dee,*
 } and
 } *Richard Lee.*

Return to a writ
of summons.

To a precept to summon the assize. *Vide Circuit.*

To a precept to summon the sessions. *Vide Sessions.*

I have altogether ceased from the execution of this writ against the within named *C. D.* having received his majesty's writ of *superfedeas* for that purpose. The answer of.

Superfedeas.

For the return to this writ. *Vide p.* 214.

Second deliver-
ance.

I have sold the goods and chattels within mentioned, for the within sum of 50*l.* being the dearest price I could get for the same, which monies I have ready as within I am commanded. The answer of.

Return to a
writ of venditio-
ni exponas.

I have sold the goods and chattels within mentioned, for the sum of 500*l.* being the dearest price

If in the exche-
quer.

price I could get for the same ; which monies I have before the barons of the king's exchequer at *Westminster*, at the day within mentioned, ready to be paid to his majesty's use. The answer of, &c. This writ issues to the sheriff on his former return of having goods to the value of, &c. and that they remain in his hands for want of buyers.

Return summoned of venire facias out of exchequer.

Summoners are, } *James Armstrong,*
and
} *Richard Rojs.*

The answer of *J. B.* }
and } Sheriffs.
} *R. S. Esqrs.*

Nibil to the same

The within named *C. D.* hath not any thing in my bailiwick, where or by which I can give notice to him, as within I am commanded, or is he found in the same. The answer of.

Venire facias juratorum.

The execution of this writ appears in the panel hereto annexed.

Here add a panel of the jurors thereto, if in *C. P.* or *exchequer*, if in *K. B.* no need, as you add one to the *distringas*.

The same return does to a *distringas*, or *habeas corpora juratorum*.

No issues are returned upon the *venire*, only pledges.

Each of the jurors are separately attached by pledges. *John Doe and Richard Roe.*

Return of Withernam nulla bona,

The within named *A. B.* hath not any cattle, goods or chattels in my bailiwick, which I can take in withernam as within I am commanded, nor hath he any other goods or chattels in my bailiwick by which he can be attached, or is he found in the same.

Cepi to the same writ,

I have taken in withernam 10 cows of the price of 40*l.* of the within named *C. D.* and delivered to the within named *J. B.* and the within named *C. D.* I have attached by his goods and chattels. *Fitz. Gage Deliv. 1.*

Quare,

The sheriff to this writ may return. *Tarde Fitz. Journ. 34.*

If

If a replevy be of pots, pans, or the like, yet sheriff on withernam may take, oxen, horses, or other cattle or goods. *Vide. N. B. 45.*

If a replevy be of pots, &c. sheriff to take others.

On a *nihil* returned, it is made a quære, whether the sheriff may attach the defendant without some special clause in the writ. *Greenw. 231.*

The sheriff may deliver the beasts or goods taken in *withernam* to the plaintiff to keep, or may keep them himself, or may drive or send them to any place within his county to be safely kept. *New Retorn. Brev. 495.*

The sheriff may deliver beasts, &c. to plaintiff to keep, or may keep himself.

The sheriff may return, that he did not deliver the cattel to the plaintiff, for that he **was** not in the county.

May return that he did not deliver.

Also he may have goods or cattle to the value, and he may take goods of any kind, of any number, and of any value reasonable in his discretion, or by the estimation of neighbours. *Dalt. 295. Ibid. 191.*

May have goods, &c. and may take goods of any kind, &c.

He may return that the cattle taken died in the pound, before delivery of them to the plaintiff. *New Retorn. brev. 496.*

May return cattle died.

By *Bracton* and *Britton*, the sheriff upon a *withernam* may take cattle or other goods to the double value.

Warrants.

THE sheriff or his under-sheriff are to make out warrants to their bailiffs, for the execution of the several writs directed to them, and these warrants must be according to the several natures of the writs, which for the *substance will direct them therein*, and the under-sheriff must make out these warrants *in the name of the high-sheriff*. *Dalt. 117.* If any sheriff, &c. deliver out any warrant before he has the writ in his custody, he forfeits 10 l. 6 *Geo. 1. c. 5. s. 263.*

Sheriff, &c. to make out warrants, and to be according to the substance of the writ.

Every

What is necessary in the warrant.

Every warant to have the *same day* and year plainly set down thereon, as shall be set down on the writ, under forfeiture of 10*l.* *ibid.* 64. *Vide p.* 64, and the attorney's name.

Warrants are now printed ready to fill up, and may be had at the stationers in town.

On an attachment of privilege in K. B.

Surry to wit. *E. F.* Esq. sheriff of the county aforesaid, To the keeper of the gaol of the said county, and also to *John Denn*, and *Richard Fenn* my bailiffs of the hundred of *B.* in the said county greeting. By virtue of a writ of our sovereign lord the king to me directed, I command you, and every of you, jointly and severally, that you attach, or one of you attach, *John King*, if he shall be found in my bailiwick, and him safely keep, so that I may have his body before the lord the king at *Westminster*, on *Monday* next, after the morrow of *All Souls*, to answer *John Denn* gentleman, one, &c. in a plea of trespass, and also to a bill of the said *John Denn*, to be exhibited against the said *John King* for one hundred pounds on promise, according, &c. hereof fail not. Given under my hand and seal of my office the day of *October*, 1786.

By the same sheriff.

Take bail for 50*l.* } Beware the defendant is not
Denn in person. } privileged, or protected,
&c.

Writ dated the day of 1786.

The like in the common pleas.

Surry to wit. *E. F.* Esq. sheriff of the county aforesaid, To, &c. (as before) that you attach *John Denn*, so that I may have his body before the king's justices at *Westminster*, on *Monday* next after the morrow of *All Souls*, to answer *Richard Fenn* gentleman, one of the attornies of the court of common bench, according to the liberties and privileges of the same court for such attornies and other ministers of the same bench, from time out of mind used and approved of in the same, in a plea of debt, hereof fail not, given, &c.

By the same sheriff.

Take

Take bail for 50 l. } Beware the defendant is not
Fenn in person. } privileged, or protected, &c.

To &c. so that I may have him before the king in his court of chancery, on the morrow of *All Souls*, wheresoever, &c. to answer his majesty, as well touching a contempt, which he, as it is alledged hath committed against his majesty; and also such other matters and things, as shall be then and there laid to his charge, and further to perform and abide such order, as his majesty's said court shall make in this behalf, hereof fail not. Given, &c.

On an attachment in the court of chancery for not answering.

By the same sheriff.

By the court for not answering at the suit of C. D. take bail for 40 l. J. K. Solicitor.

Before the king's barons of his exchequer, at *Westminster*, on &c. to answer, &c.

The like in the exchequer.

To &c. attach *Richard Fenn*, gent. one, &c. so that I have him before the king's justices at *Westminster*, on next after to answer his majesty, of and concerning those things which shall then on the king's behalf be objected against him, hereof fail not. Given, &c.

The like against an attorney in C. B.

By the same sheriff.

Put at the foot, the same, as on the attachment in what cause, as *Denn* against *Fenn*, gent. one, &c.

Surry } *E. F.* sheriff of the county aforesaid, to wit. } to the keeper of the gaol of the said county, and also to *A. B.* and *C. D.* my bailiffs of the hundred of *B.* in the said county greeting: By virtue of a writ of our sovereign lord the king to me directed, I command you, and every of you, jointly and severally, that ye take, or one of you take *John King*, if he shall be found in my bailiwick, and him safely keep, so that I may have his body before the lord the king at *Westminster*, on *Wednesday* next after the morrow of *All Souls*, to answer to *John Denn* in a plea of trespass, and also to a bill of the said *John Denn*, against the said *John King*, for 40 l. upon promises according,

Warrant on a latitat.

Warrants.

according &c. hereof fail not, as you will answer at your peril. Given under the seal of my office the day of 1786.

Take bail for 20 l.

A. K. attorney.

By the same Sheriff.

Warrant on a non omittas.

If on a non omittas capias say, "command you that you omit not by reason of any liberty in my bailiwick, but that you enter the same and take, or one of you take, J. K. &c.

Writ dated the day } Beware the defendant be of 1786. } not privileged or protected. This warrant is allowed for one defendant and no more, and to be executed by no bailiffs but those who have given the said sheriff security.

On a bill of Middlesex.

Surry } As before, to answer *John Denn* in a to wit. } plea of trespass, and also to a bill of the said *John* to be exhibited against the said *Richard* for 40 l. on promises according, &c.

Warrant on a special capias.

Surry } *E. F. Esq.* sheriff of the county afore- to wit. } said, to the keeper of the gaol of the said county, and also to *A. B.* and *C. D.* my bailiffs in the said county, greeting; By virtue of a writ of our sovereign lord the king to me directed, I command you, and every of you, jointly and severally, that ye take, or one of you take *John King* if he be found in my bailiwick, and him safely keep, so that I may have his body before the lord the king, at *Westminster*, on the morrow of *All Souls*, wheresoever his majesty shall then be in *England*, to answer *John Denn* in a plea of trespass on the case, to the damage of the said *John Denn* of 40 l. Hereof fail not, as you will answer at your peril. Given under the seal of my office, the day of in the year of our Lord 1786.

Bail for 20 l.

A. K. attorney.

Writ dated the day } of 1786. }

By the same sheriff.

Ditto on a capias in the C. P.

As before, to answer *John Denn*, in a plea of trespass, and also that the said *John King* may answer

swer the said *John Denn*, according to the custom of the king's court of common bench, in a certain plea of trespass on the case upon promises, to the damage of the said *John Denn* of 40 l. Hereof fail not, as you will answer at your peril. Given, &c.

Bail for 20 l. *A. K. attorney.*
Writ dated day }
of 1786. } By the same sheriff.

As before to satisfy *John Denn*, as well a certain debt of 500 l. which the said *John Denn*, lately in the king's court before the king himself at *Westminster*, recovered against the said *Richard Fenn*, as also 63 s. which in the said court were awarded to the said *John Denn* for his damages, costs, and charges; whereof the said *Richard Fenn* was convicted. Hereof fail not as you will answer at your peril. Given, &c.

Ditto on a ca.
sa. in debt.

Levy 253 l. besides poundage }
and officers expences. } *A. K. attorney.*

As before, that of the goods and chattels of *John Doe* in my bailiwick, you cause to be made as well a certain debt of 500 l. which *Richard Roe* lately recovered against the said *John Doe* in the king's court, before the king himself at *Westminster*, as also 63 s. which in the same court were awarded to the said *Richard* for his damages, costs and charges; whereof the said *John Doe* was convicted; so that I may have that money before his majesty on *Wednesday* next after the morrow of *All Souls* to render to the said *Richard Roe*, for his debt and damages aforesaid. Hereof fail not, as you will answer at your peril. Given, &c.

Ditto on a fi.
sa. in debt.

Levy 353 l. besides, &c. }
A. K. attorney. } By the same sheriff.

As before, to satisfy *John Denn* of 500 l. which the said *John Denn*, lately in our court before us at *Westminster*, recovered against the said *Richard Fenn* for his damages, which he sustained as well by means of not performing certain promises and undertakings lately made by the said *Richard Fenn*,
to

Ditto on a ca.
sa. in case.

to the said *John Denn*, as for his costs and charges, by him about his suit in that behalf expended; whereof the said *Richard Fenn* was convicted. Hereof fail not, as you will answer at your peril. Given, &c.

Levy 500 l. } By the same sheriff.
A. K. attorney. }

Ditto on a fi.
fa. in case.

As before, that of the goods and chattels of *Richard Fenn*, in my bailiwick, you cause to be made 500 l. which *John Denn* lately in our court before us at *Westminster*, recovered against the said *Richard Fenn* for his damages which he sustained, as well by means of the not performing certain promises and undertakings lately made by the said *Richard Fenn* to the said *John Denn*, as for his costs and charges, by him about his suit in that behalf expended, whereof the said *Richard Fenn* was convicted. Hereof fail not, as you will answer at your peril. Given, &c.

Levy 500 l. By the same sheriff.

To A. B. my bailiff of the hundred of C.

Warrant on a
venire facias in
the exchequer.

Surry, } *E. F.* Esquire, sheriff of the county a-
to wit. } fore said, by virtue of his majesty's writ to
me directed, I command you, that you give notice to *C. D.* that he be and appear before the barons of his majesty's *Exchequer* at *Westminster* in three weeks of the *Holy Trinity* next coming, to answer *C. D.* his majesty's debtor, of a plea of trespass on the case, whereby, &c. Hereof fail not. Dated, &c.

By the same sheriff.

Ditto on a dis-
tringas in the
exchequer.

To A. B. my bailiff of the hundred of C.

Surry, } *E. F.* Esquire, sheriff of the county afore-
to wit. } said, by virtue of his majesty's writ to
me directed, I command you that you distrain *C. D.* by all his lands and chattels in my bailiwick, so that you may have him before the barons of his majesty's *Exchequer* at *Westminster* in three weeks of the *Holy Trinity* next coming, to answer *C. D.* his majesty's debtor in a plea of trespass on the case, whereby, &c. Hereof fail not. Dated, &c.

By the same sheriff.

Middlesex,

Middlesex, } To *A. B.* and *C. D.* my bailiffs, dis-
to wit. } train *F. G.* by all his lands and chat-
tels in my bailiwick so that he appear before the
lord the king, on the morrow of the ascension of
our Lord, wheresoever his majesty shall then be in
England, to answer *H. H.* of a plea of trespass on
the case to the damage of the said *H.* of 300*l.*
Dated, &c.

Ditto in the
King's Bench.

A. K. attorney.

As before, That you give notice to *A. B.* that
he may appear before the barons of his majesty's
Exchequer at *Westminster*, the day of
next coming, to shew cause why his majesty should
not have execution against him for 100*l.* which
his majesty recovered against him, according to
the tenor of the said writ. Hereof fail not. Da-
ted, &c. By the same sheriff.

Ditto on a sci.
fa.

As before, That you give notice to *A. B.* that
he may appear before the king at *Westminster* on
Wednesday next after the morrow of *All Souls*, to
shew cause why *C. D.* should not have his execu-
tion against him for 50*l.* debt, and 63*s.* damages,
according to the tenor of the said writ. Hereof
fail not, as you will answer at your peril. Da-
ted, &c. By the same sheriff.

The like in the
King's Bench.

As before, That you give notice to *G. D.* and
E. F. bail of *C. D.* that they may appear before
the king at *Westminster*, on *Wednesday* next after
the morrow of *All Souls*, to shew cause why *A. B.*
should not have execution against them for 100*l.*
damages, recovered against the said *C. D.* in the
king's court, before the king himself at *Westmin-
ster*, according to the force, form and effect of a
certain recognizance acknowledged by them the
said *G. D.* and *E. F.* for the said *C. D.* Hereof
fail not, as you will answer at your peril. Da-
ted, &c. By the same sheriff.

The like on a
sci. fa. against
bail, by bill.

Surry, } *A. B.* Esquire, sheriff of the county a-
to wit. } foresaid, to *A. K.* and *C. D.* my bailiffs
of the hundred of *N.* By virtue of the king's writ
to me directed, I command you, and each and every
N n of

The like on an
extent.

Take the words
of the writ.

Capias utlagatum.

Ne exeat regno.

of you, jointly and severally, that you or any of you, take *J. L.* if he shall be found in my bailiwick, and him safely keep, so that I may have his body before the king's barons of his *Exchequer* at *Westminster*, on the day of instant, to satisfy his majesty five hundred pounds which he was found indebted to him, according to the tenor of the said writ. I also command you, or any of you, that you seize all the goods and chattels, lands and tenements which the said *J. L.* hath in my bailiwick, so that I may retain the same until his majesty be fully satisfied the said debt, according to the form of the statute made and provided for such kind of debts. Hereof fail not, as you will answer the same at your peril. Given, &c.

By the same sheriff.
Oxfordshire, } *J. B.* Esquire, sheriff of the said
to wit. } county, to, &c. by virtue of the writ of our lord the king to me directed, I command you, &c. that you omit not by reason of any liberty in my bailiwick, but that you or one of you enter the same, and seize all the goods and chattels, lands and tenements, which *A. B.* late, of, &c. merchant, hath or had in my bailiwick, on the day of in the 22d year of his present majesty's reign, on which day the said *A. B.* was outlawed in *Middlesex*, at the suit of *C. D.* in a plea of trespass on the case, to the damage of the said *C. D.* of 300*l.* so that I may cause the said goods and chattels, lands and tenements, to be appraised and seized into his majesty's hands. I do command you, each and every of you, jointly and severally that you or any of you arrest the said *A. B.* so that I may have his body on the day and at the place aforesaid, to do and receive what the said court shall consider of him in this behalf. Hereof fail not, as you will answer the same at your peril. Given, &c. By the same sheriff.

That you forthwith arrest the body of *A. B.* and keep him, until he find sufficient bail or security for the sum of 500*l.* that he will not go, or attempt

attempt to go, into parts beyond the seas, without leave of his majesty's court of *Chancery*; and in case he refuse so to do, I command you, each and every of you, that you commit him to his majesty's next prison within my bailiwick, there to be kept in my custody, until he shall do it of his own accord. Dated, &c. By the same sheriff.

Bail for 500*l*.

To *A. B.* and all other my bailiffs.

Surry, } Quit possession of the goods and chattels to wit. } of *A. B.* notwithstanding my warrant to you, or any of you directed, grounded on a writ of *fi. fa.* to me directed, returnable before the lord the king at *Westminster*, on *Wednesday* next after the morrow of *All Souls*, at the suit of *J. K.* for 100*l.* debt, and 63*s.* damages. Indorsed to levy 53*l.* 19*s.* besides officers fees, sheriffs poudage, &c. *J. K.* attorney. And for your so doing, this is your warrant. Dated, &c.

Warrant to quit possession on a fieri facias.

Surry *ss.* To *A. B.* and *C. D.* my bailiffs, &c. Summon, *C. D.* that he be and appear before the king on the morrow of *All Souls*, wheresoever, &c. to answer *J. K.* in a plea of trespass on the case, to the damage of the said *K.* of 100*l.* Dated, &c.

Summons on an original.

Oxon. } *T. B.* Esq. sheriff of the county afore- to wit. } said, to the keeper of his majesty's gaol of the said county. Discharge out of your custody, the body of *W. W.* if detained only at the suit of *C. C.* by virtue of a writ of *latitat*, issued out of his majesty's court of *King's Bench*, at *Westminster*, and returnable there, on next after to answer the said *C. C.* in a plea of trespass, and also to a bill of the said *C. C.* for 100*l.* upon promises, bail for 50*l.* And for your so doing this shall be your warrant. Given, &c.

Warrant on a superedeas to discharge the defendant out of custody.

By the same sheriff.

Oxon. } *G. A.* Esq. sheriff of the county afore- to wit. } said, to *T. B.* and *C. D.* my bailiffs, greeting: By virtue of his majesty's writ to me directed, I hereby command you, that you command *C. L.* and *J. K.* that they justly, and with-

Summons on a writ of dower.

Warrants.

out delay, render to *A. B.* and *J.* his wife, the reasonable dower of the said *J.* which falleth to her out of the freehold which was of *T. M.* heretofore her husband, in the parish of *St. Mary's* in *B.* whereof she hath nothing, so they say, and whereof they complain, that the aforesaid *C. L.* and *J. K.* now defendants, deforceth them, and unless they shall so do, and the said *B. B.* and I shall give me security, that their suit shall be prosecuted, then summon, by good summoners, the said *C. L.* and *J. K.* now defendants, that they be before the justices of our lord the king at *Westminster*, in to shew wherefore they will not do it. Hereof fail not. Given, &c.

To, &c.

By the same sheriff.

On a writ of
summons against
a member.

Oxon. } Summon *G. P.* Esq. (having privilege of
to wit. } parliament) that he be before his majesty
at *Westminster*, on next after to an-
swer *J. K.* in a plea of trespass on the case, upon
promises, to the damage of the said *J. K.* of 50*l.*
Hereof fail not. Given, &c. By the same sheriff.

Warrant on a
distringas against
a member.

Oxon. } *G. K.* Esq. sheriff of the county afore-
to wit. } said to *A. B.* my bailiff, greeting: By
virtue of his majesty's writ to me directed, I com-
mand you, that you distrain *J. K.* Esq. having
privilege of parliament, by all his lands and chat-
tels in my bailiwick, so that neither he, nor any
person for him, may lay their hands upon the same,
until I have another precept thereof from his said
majesty, and that I may answer to his said majesty
for the issues thereof, so that the said *J. K.* be be-
fore his majesty in wheresoever, &c. to an-
swer *C. D.* of a plea of trespass in the case, to the
damage of the said *C. D.* of 50*l.* Hereof fail not,
as you will answer at your peril. Given, &c.

On a writ of
possession.

Oxon. } *A. K.* Esq. sheriff of the county afore-
to wit. } said, to *A. B.* and *C. D.* my bailiffs,
&c. greeting: By virtue of his majesty's writ of
habere facias possessionem, to me directed, I com-
mand you, that you deliver unto *John Doe*, pos-
session of his term yet to come, of and in one mes-
suage,

suage, &c. (here set forth the premises) with the appurtenances in the parish of in the county aforesaid, which he hath recovered, against *Richard Roe*, on the demise of *J. G.* and render me an account herein, so that I may make the same appear to the king at *Westminster*, on next after Hereof fail not. Given, &c.

By the same sheriff.

If it's on a double demise, say, after the words on the demise of *J. G.* And also, of and in one other messuage, &c. (as in the writ) with the appurtenances, in the parish of in the said county, which he hath recovered against *Richard Roe*, on the demise of *A. H.* and render, &c.

On a double demise.

To *B. K.* my bailiff.

Middlesex } Give notice to *A. B.* to be and appear to wit. } before the king's justices at *Westminster*, on the morrow of *All Souls*, that he may be there ready to proceed in the plaint which is in my county, without the king's writ, between the said *A. B.* plaintiff, and *C. D.* defendant, of the goods and chattels of the said *A.* taken, and unjustly detained, as it is said. Dated, &c.

Warrant on a pone in replevin.

Berkshire, *js.* *C. S.* Esq. sheriff of the county aforesaid, to *E. S.* my bailiff, greeting: By virtue of his majesty's several writs, &c. processses to me directed, issued out of his majesty's court of exchequer. I command you, that you omit not on account of any liberty, but that you enter the same, and levy and collect the several sums of money hereinafter particularly specified, so that I may have those monies before the barons of the said court of exchequer, on the morrow of *Saint Martin* next coming, and then and there to be paid to his majesty's use, hereof fail not at your peril. Given, &c.

Warrant on exchequer processs,

Berks, *js.* *E. S.* sheriff of the county aforesaid, to *J. L.* my bailiff, greeting: By virtue of his majesty's writ to me directed, I command you, that you omit not, &c. but without delay levy on the goods and chattels of the several persons

Ditto.

hereinafter named, the several sums of money hereinafter charged upon them respectively, as hereunder written, so that I may have the said monies to be paid to his majesty's use. And in case the goods and chattels of any of them shall not be sufficient, for the satisfaction thereof, that you omit not, but take their bodies, (peers and peeresses only excepted) wheresoever you shall find them in my bailiwick, and them safely keep, until they shall respectively satisfy to his majesty the several aforesaid debts upon them, and every of them charged, and what you shall do herein certify to me, that I may make the same appear before the barons of his majesty's exchequer, in a month (here put return) next coming. Hereof fail not a your peril. Given, &c.

Warrant to conduct on a habeas corpus.

Berks, (js.) R. C. Esq. &c. to J. W. keeper, &c. greeting: By virtue of his majesty's writ of habeas corpus to me directed, I command you, that the body of T. S. in your custody, under safe and sure conduct, with a note of his cause of detainer, you forthwith bring before William Earl Mansfield, his majesty's chief justice of his court of King's Bench, at his chambers in Serjeants Inn, Chancery Lane, London; that the said T. S. may then and there, do, and receive all such matters and things, as the said chief justice shall then and there enjoin him thereof, &c. Given, &c.

To summon the inhabitants of the hundred of, &c. on statute of hue and cry on an original.

Berks } E. R. Esq. &c. to J. P. and J. R. my to wit. } bailiffs, greeting; By virtue of his majesty's writs to me directed, I command you, and each of you, that you summon and warn the inhabitants of the hundred of R. in the county aforesaid, to be and appear before our sovereign lord the king, (on the return) to answer as well to our said lord the king, as to G. G. in an action brought against the said hundred, on a statute made in the 13th year of the reign of his late majesty king Edward the I. for a robbery committed on him the said G. G. in the parish of T. and hundred of R. aforesaid, for, &c. in monies numbered, being the

the proper monies of the said G. G. And this, &c. Given, &c.

Berks, (js.) By virtue of a warrant from E. S. sheriff, &c. I do hereby summon and warn you to be, and appear before the justices at the next general quarter sessions of the peace, to be held at A. in the said county, on *Tuesday* the second day of *October* next, at 10 o'clock in the forenoon, then and there to serve on the grand jury. Dated, &c.

Summons from the bailiff, to a person to serve on the grand jury at sessions.

A. B. bailiff of the hundred of C.

Berks, (js.) E. S. Esq. sheriff, &c. to J. B. &c. my bailiffs, greeting: By virtue of the writ of our sovereign lord the king to me directed, I command you, and every of you, that you attach G. L. by his body, according to the custom of *England*, if he shall be found in my bailiwick, and him under safe and secure conduct; lead, or cause to be lead to the gaol of our said lord the king, for my county there, in prison to be safely kept, until he shall have made satisfaction to the holy church, as well for the contempt, as for the injury by him done unto it: And how you shall execute this warrant forthwith, make appear to me, so that I may notify the same to his majesty, from the day of *Saint Michael* in three weeks wheresoever his majesty shall then be in *England*, that his said majesty may cause further to be done in the premises what of right, and according to the form of the statute in such case lately made and provided, shall be meet to be done. And this you are by no means to omit, hereof, &c. Given, &c.

Warrant on a writ of excommunicato capiendo.

Berks, (js.) E. S. Esq. &c. to the keeper of the gaol of the said county, and also to A. B. and C. D. my bailiffs, greeting: By virtue of the writ of our sovereign lord the king to me directed, I command you, and each of you, jointly and severally, that you do on his majesty's behalf, make proclamation in all places within my bailiwick, as well within liberties, as without, where-

Warrant on attachment of contempt and proclamation for not putting in an answer in the court of chancery.

soever it shall seem meet; that *F. G.* clerk, do upon his allegiance in 15 days after *St. Martin* next ensuing, personally appear before our said lord the king, in his majesty's court of *chancery*, wheresoever it shall then be in *England*; nevertheless, in the mean time, if you can find him the said *F. G.* attach him, so that I may have him before our said lord the king, in his majesty's said court, at the time above mentioned, to answer to his majesty, as well touching a contempt which he hath, as it is alledged committed against his said majesty, as touching those matters which shall be then and there objected against him, or laid to his charge; and further, to perform and abide such order as his majesty's said court shall make in this behalf, &c. Given, &c.

On an excise pro-
cess out of the
exchequer.

Berks. (ss.) J. G. Esq. sheriff of the county aforesaid; to the keeper of the gaol of the said county, and also to *S. H.* and *V. H.* my bailiffs, for this purpose only, greeting; By virtue of the writ of our sovereign lord the king, to me directed, I command you, and each of you, jointly and separately, that you omit not by reason of any liberty in my bailiwick, but that you enter the same, and take *B. H.* if he shall be found in my bailiwick, and him safe and securely keep, so that I may have his body before the barons of the exchequer of our said lord the king at *Westminster*, on the 12th day of *April* next, to answer our said lord the king, concerning certain articles, whereon he is impeached, by an information exhibited against him before the said barons, by his majesty's attorney general, for the forfeiture of 607 *l.* 7 *s.* for the offence in the said information mentioned, &c.

Bail for 202 *l.* 10 *s.*

S. S. solicitor for the excise.

On habens cor-
pus ad testifican-
dum.

Berks. ss. I. G. esq. sheriff, &c. to the keeper of the gaol of the said county greeting, By virtue of a writ of our sovereign lord the king to me directed, I command you, that you have the body of

of *E. W.* detained in my prison under your custody as it is said, by whatsoever name he may be charged in the same prison, under safe and sure custody, before the justices of our said lord the king, assigned to hold the assizes in and for the county of *Berks* at the town of *Abingdon* on Monday the 24th day of *July* next coming,, then and there to testify the truth according to his knowledge in a certain action in our court, before the said justices depending, and then and there to be tried between *I. C.* plaintiff, and *I. S.* defendant, and immediately after the said *E. W.* shall have then and there given his testimony before the said justices, to return him the said *E. W.* to the said prison under the like safe and secure conduct. Herein fail not, given, &c.

The form of these warrants are inserted for the benefit of the clerk in the office of under-sheriff; but let him remember, that he is to *take the substance of the writ only*; and in the words there expressed: by that mode, he will be free from error; the recital of the *whole writ is unnecessary*, therefore if there should be a recital in the writ, let him pursue the *mandatory part only* and direct his bailiff how much he is to *hold the defendant to bail for, or take in execution.* Caution.

Many there are that recite the whole writ in a warrant upon a *special capias*, but the substance is sufficient, as, "*to answer the plaintiff in a plea of trespass on the case, To his damage of 500 l. as he saith.*" And when a *non omittas* comes to the office, use the words therein, as "*that you omit not by reason of any liberty in my bailiwick, but enter the same, and take, &c.*"

The sheriff cannot charge more than 2 s. 4 d. on any warrant upon a *special capias*, summons, or original bill, *venire* out of exchequer, *scire facias*, *ne exeat regno*, *superfedeas*, *venditioni exponas*, attachments, *distingas*, *elegit*, *feri facias*, *capias ad satisfaciendum* or other execution, though he recite his whole writ. Fees to the sheriffs of counties for warrants.

But

But on writs of *non omittas*, and *capias* issued for the king's debt on customs or excise forfeitures they charge 5 s. in the country.

On a *latitat* or *capias* they charge 2 s. for a warrant. *Surry*, *Essex*, and *Kent* 6 d. If there is a discharge to the gaoler on a *superfedeas* 2 s. 4 d.

	£.	s.	d.
For attending to strike a special jury	2	2	0
For a view	2	2	0
Attendance at the trial	1	1	0
For summoning a jury upon a commission of lunacy	2	2	0
For an inquisition on enquiry	1	10	4
Inquisition on outlawry	1	15	6
Elegit	1	15	6
Extent	1	15	6
For more than one finding	0	3	4
Inquisition on scire fieri enquiry	1	15	6
Inquisition taken before chief justice	1	1	0
Attending on an adjournment	4	10	0
Common bill of sale	1	1	0
The like on extent	1	1	0
For all others according to length of the schedule			
For a bail bond on ne exeat regno	1	1	0
For return of ha. corp. one writ	0	9	4
Every other action	0	3	4
Execution	0	4	10
If execution returned only	0	12	4

I N D E X

T O

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N. B. The sheriff should be very cautious how he makes a bill of sale of goods, because if they afterwards turn out to be worth considerably more than the *appraised value*, which is often the case, the plaintiff has a right of action for selling them by the appraisement at such under-value. I have known such an action brought, and the plaintiff recover; therefore it behoves the sheriff to appoint *men of integrity* to be *brokers*; as he is *responsible* for their *conduct*; and I think every sale should be made by auction of goods taken in execution, that the sheriff may shew himself impartial between the parties, which gives the poor defendant an opportunity of seeing his goods disposed of.

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1. N. D. E. X.

I N D E X.

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Sheriff

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F I N I S.

A P P E N D I X.

*An Indenture for setting over Prisoners and Writs between the
old and new Sheriff.*

THIS Indenture made the day of in the
year of the reign of our sovereign lord *George* the
third, by the grace of God, of *Great Britain, France and Ireland*,
king, defender of the faith, &c. and in the year of our Lord
Between *J. O.* Esquire, late sheriff of the county of *Oxford*,
of the one part, and *W. K.* esquire, present sheriff of the said
county of the other part, Witnesseeth, that the said late sheriff
hath delivered, and the said present sheriff hath received, from the
said late sheriff, at the time of his going out of his office, the
bodies of the several persons herein after named, charged with the
cause or causes herein after mentioned, (that is to say) *A. B.* was
taken the 27th day of *February* 1786. by virtue of a writ of *Capias*
ad Satisfaciendum, returnable before the king's justices at *West-*
minster in fifteen days from the day of *Easter*, to satisfy *C. D.*
for 100 *l.* which in the king's court before the king's justices at
Westminster, were awarded to the said *C. D.* for his damages,
&c. whereof the said *A. B.* is convicted—*Corbet and Hardy*—
he is detained by virtue of another writ of *Capias ad Satisfaciendum*,
returnable before the lord the king at *Westminster*, on *Monday*
next after the morrow of the Ascension to satisfy *T. H.* for 100 *l.*
which in the king's court before the king himself at *Westminster*,
were awarded to *J. H.* for his damages, &c. whereof the said *A. B.*
is convicted—*Johnson* for *Hatt*—he is also detained by virtue of a
writ of attachment, returnable before the barons of the king's
Exchequer at *Westminster*, on the day of
last to answer the lord the king concerning divers trespasses, con-
tempt and offences by him lately done and committed, at the
suit of *R. I.* for not paying the several sums of, &c. making
together the sum of 200 *l.* costs taxed — *Lane.*

[A]

In

In witness whereof the said parties to these presents have hereunto set their hands and seals, the day and year first above written.

I acknowledge to have in my custody the bodies of the several persons hereinbefore named, except *A. B.* and *C. D.* against whose names the word *discharged*, and *J. B.* — deceased is written in the margin of this deed, the prisoners in my custody, being in number one hundred and twenty-five. Witness my hand the day of one thousand seven hundred and eighty.

Witness.

R. A. Goaler.

Deputation from the High-Sheriff to the Under-Sheriff, to be executed before the first Day of Easter Term, and filed in the Treasury of the Remembrancer's Office, Paper Buildings, King's Bench Walks. [To be ingrossed on a 6s. stamp.]

Suffex, } I Certify the barons of his majesty's court of Exchequer, that I *A. B.* esquire sheriff of the said county, have deputed, constituted and appointed, and in my place put *C. D.* of, &c. gentleman, my deputy, to give an account of the issues and profits of my office of sheriffwick only, during so long time as I shall continue sheriff of the said county, according to the course of the Exchequer as in such case is required; I have duly authorized and appointed the said *C. D.* my under-sheriff of the said county, to execute the said office for me, and in my name, during my sheriffalty. In witness whereof I have hereunto set my hand and seal of office, this day of 1786.
Sealed and delivered.

Letter of Attorney from the High-Sheriff to his Under-Sheriff to receive his Patent Money. [6s. Stamp.]

WHEREAS by an act of parliament made and passed in the third year of the reign of his late majesty king George the First, intituled "*An act for the better regulating the office of sheriff, and for ascertaining their fees, for suing out their Patents, and passing their accounts.*" certain sums of money are ordered to be paid to the sheriffs of *England* and *Wales* for the purposes in the said act mentioned; And whereas the sum of 90*l.* 5*s.* is, by the said act, ordered to be paid to the sheriff of the county of *Suffex*; Know all men by these presents, that I, *A. B.* esquire, sheriff of the said county of *S.* for the year ending at 1786, in the 26th year of his present majesty, Have made, ordained, constituted,

stituted, and appointed, and by these presents *Do* make, ordain, constitute, and appoint *C. D.* of, &c. and *E. F.* of, &c. gentlemen, my true and lawful attorneys, jointly and severally, for me, and in my name, to ask, demand, and receive of and from the lords commissioners of his majesty's treasury, or of or from any other person or persons concerned in his majesty's receipt or exchequer, the said sum of 90*l.* 5*s.* and for me, and in my name, to give such receipt or acquittance for the same as in such case is usual; And further to do and perform all such other matters, and things as shall be necessary in this behalf. In witness, &c.

Sealed, &c.

Indenture of Covenants between the High Sheriff and Under Sheriff.

THIS Indenture made the day of in the year of the reign of our sovereign lord *George* the third, by the grace of God, of *Great Britain, France and Ireland*, king, defender of the faith, and so forth; and in the year of our Lord 1786, between the right worshipful *C. A.* and *R. G.* esquires, two of the aldermen of the city of *London*, of the one part, and *J. R.* of *London*, gentleman, of the other part, Witnesseth, that they the said *C. A.* and *R. G.* being elected and chosen, and having on the day of the date hereof, taken the office of sheriff of the county of *M.* for the whole year, commencing from the day of the date hereof; in consideration of the assured hope and trust which they the said *C. A.* and *R. G.* have, that the said *J. R.* and *C. B.* will take care that the office of under-sheriff, be honestly, uprightly, duly and sufficiently discharged within the said county of *M.* and that the said sheriff shall be free and discharged from all charges and damages whatsoever relating to the said office; and for the considerations hereafter in these presents mentioned, they the said *C. A.* and *R. G.* have been pleased and contented to depute, ordain, constitute and make the said *J. R.* and *C. B.* to be their under-sheriff of the said county of *M.* for the same time and term, and so long as they or either of them shall continue in the said office; but nevertheless, so as that the said office of under-sheriff shall be executed by and with the joint concurrence and direction of them the said *J. R.* and *C. B.* and not otherwise, and also subject to the proviso or power hereinafter mentioned, of displacing, or removing the said *J. R.* and *C. B.* from the said office of under-sheriff, as hereinafter is mentioned. And the said *C. A.* and *R. G.* the more effectually to empower the said *J. R.* with the concurrence of the said *C. B.* as aforesaid, to execute the said office of under-sheriff of the said county of *M.* have, and each of them *hath* (as much as in

them lieth, and they lawfully may) authorized, constituted, deputed, and *do*, and each of them *doth*, authorize, constitute, depute, and appoint him the said *J. R.* and all and every such clerk and clerks as he the said *J. R.* with such concurrence as aforesaid, shall employ and appoint in the said office of undersheriff, by writing, under the hand and seal of the said *J. R.* in the name of them the said *C. A.* and *R. G.* as sheriff of the said county of *M.* upon the request of any plaintiff or plaintiffs, to sign, seal, execute, and as their act and deed deliver; and all and every assignment and assignments of any bail-bond and bail-bonds, that shall or may, at any time or times hereafter, during their sheriffalty, be taken in their names as sheriff of the said county of *M.* from any defendant or defendants, by virtue of any writ, precept or precepts, or mandate whatsoever, which shall be directed to them for the execution thereof; and also for such deputy or deputies to take any inquisitions requisite on all process requiring the same, and as shall be directed to the sheriff of the county of *M.* during the sheriffalty of the said *C. A.* and *R. G.* in consideration whereof, and for other good causes and considerations, them thereunto moving, they the said *J. R.* and *C. B.* for themselves severally, and for their several and respective heirs, executors, and administrators, *do*, and each of them *doth*, covenant, promise, and grant, to and with the said *C. A.* and *R. G.* respectively, and their respective executors and administrators, by these presents, in manner following, (that is to say,) that, he the said *J. R.* with such concurrence as aforesaid, shall well and truly, honestly and sufficiently, by and during the said term and time, and so long as the said *C. A.* and *R. G.* or either of them, shall continue in the said office of sheriff of the said county of *M.* execute and duly perform the same carefully, well, truly and honestly, demean and behave himself therein, and shall, during the said time and term, well, truly, honestly, and sufficiently, with the concurrence of the said *C. B.* as aforesaid, execute, or cause and procure to be executed, all and every writ and writs, process and processes, warrant and warrants, precept and precepts, mandate and mandates, directed, or to be directed from our sovereign lord the king, his heirs or successors, and from and out of all and every or any of his majesty's courts at *Westminster*, or any other courts elsewhere, or otherwise, or from any commissioner or commissioners, justice or justices of the peace, or other person or persons, officer or officers, which have or shall have authority thereunto, to the said sheriff of the said county of *M.* which during the said time or term shall be or to be executed; and of the same and every of them, in all due, fit, and convenient time, shall make true and sufficient returns at the several days, times, and places according as the said *C. A.* and *R. G.* by the said writs, processes, warrants, precepts and

and mandates, or any of them, is or shall be required, limited, or appointed to return the same; and shall also by and during the said time and term, and at all times afterwards, save, keep harmless, and indemnified, the said *C. A.* and *R. G.* and each of them, their and each of their heirs, executors, and administrators, and their and each of their goods, chattels, lands, tenements, hereditaments, and estate and every part and parcel thereof, of and from all manner of action and actions, cause and causes of actions, suits, fines, and amerciaments, pains, sum and sums of money, penalties, contempts, forfeitures, judgments, executions, damages, costs, and losses, and of and from all and every other troubles, charges, and incumbrances whatsoever, that shall or may happen, arise, grow, put unto, or shall be assessed, imposed, set, or taxed upon or against the said *C. A.* and *R. G.* or either of them, or upon the sheriff of *M.* at any time or times, for or by reason of the executing, not executing, returning, not returning, or mis-returning, or the not due returning or executing of any of the said writ or writs, process or processes, mandate or mandates, precept or precepts, warrant or warrants, or by reason of any suits or disputes as may hereafter arise between the said *J. R.* and *C. B.* or either of their executors, or administrators, and without any trouble, costs, charges, damages, or expences, therefore to be sustained, incurred or expended by the said *C. A.* and *R. G.* or either of them, their or either of their executors or administrators, in, about, for touching or concerning the same; and shall also from time to time, and at all times hereafter, give notice unto the said *C. A.* and *R. G.* of all and every writ or writs that shall be sued or brought against them, or either of them, that shall come to the said *J. R.* and *C. B.* or either of them, their, or either of their deputies, clerks, or servants; or whereof the said *J. R.* and *C. B.* or either of them shall have notice, and shall not appear, or cause any appearance to be made or entered, or any common bail to be filed upon any writ or action, that shall be brought against the said *C. A.* and *R. G.* or either of them, without the privity or allowance of them the said *C. A.* and *R. G.* or such of them, against whom any such writ shall be brought; And further, that the said *J. R.* and *C. B.* or either of them, their or either of their deputy or deputies, clerk or clerks, or any other person or persons for or under them, or either of them, in the name or names of the said *C. A.* and *R. G.* or either of them, shall not, at any time or times hereafter, during the said term or terms, make, or cause to be made, any return or returns, of or to any writ or writs, process or processes, precept or precepts, warrant or warrants, mandate or mandates whatsoever, touching or in any wise concerning, the liberties or franchises of the city of *London*, in the name or names of the said *C. A.* and *R. G.* as sheriff of the said county of *M.* without timely acquainting them the said *C. A.*

and *R. G.* therewith, and taking and pursuing their just and lawful directions therein, if they upon or after such notice in due time give such directions therein; *And also*, that they the said *J. R.* and *C. B.* or one of them, their, or one of their executors or administrators, shall and will, at all times hereafter, acquit and discharge, or otherwise well and sufficiently save, keep harmless and indemnify the said *C. A.* and *R. G.* and each of them, their and each of their heirs, executors, and administrators, and their, and each of their goods and chattels, lands, tenements, and estates, of and from all and every suits, charges, losses, payments, damages, fines, amerciaments, and hindrances whatsoever, that shall or may, at any time or times, during the said time they shall continue in said office, or at any time then after, arise, happen, grow, or come unto, or be brought against them the said *C. A.* and *R. G.* or either of them, their, or either of their heirs, executors, or administrators, goods, chattels, lands, or tenements, for or by reason of any rescue or rescues, escape or escapes, or letting any prisoner or prisoners, voluntarily, or negligently, or otherwise, to go at large or escape, or for not taking sufficient bond or bonds, with sufficient and good security; or for persons arrested or to be arrested; or of or for prisoners bailable, or of refusing to accept of bond or bonds, in such manner as by law is or shall, during the sheriffalty of the said *C. A.* and *R. G.* be required of any person or persons arrested, or to be arrested, for any matters or causes, for which he, she, or they, shall or should be bailed by law; or for the making, or making amiss, or not due making of all or any assignment, of all or any bail-bond or bail-bonds; or for not putting any warrant or warrants of attorney, in any of the courts of record at *Westminster*, or elsewhere; for or by reason of any negligence, mis-feazance or mis-feazances, non-feazance or non-feazances, abuses, misdemeanors, commission or commissions, omission or omissions, default, delay, or contempt; or for or by reason of any other matter, cause, or thing, that should or ought, at any time, in any kind whatsoever, to be done and performed by the said *J. R.* and *C. B.* or either of them, as under-sheriff of the said county of *M.* or by their, or either of their deputy or deputies, clerk or clerks, bailiff or bailiffs, servant or servants, or by reason of his, or their, or any of their not doing, over-doing or neglecting, his or their duty or duties; or for or in respect of any matter, cause, or thing whatsoever, hereafter to be done or omitted to be done, by him, them, or any of them, concerning the said office: *And moreover*, that they the said *J. R.* and *C. B.* or one of them, shall from time to time, and at all times when thereunto required; as soon as conveniently may be, during the said time and term, and until the said *C. A.* and *R. G.* shall be duly discharged from the said office of sheriff, deliver, or cause to be delivered, unto the said *C. A.* and *R. G.* or one of them,

a true account or inventory in writing, of all extents, and judicial writs, or process whatsoever, that shall come to the hands of the said *J. R.* and *C. B.* or either of them, or of their, or either of their agent or agents, clerk or clerks, deputy or deputies, or any person or persons appointed to act for, by, or under them, or any of them, to be executed with the teste and return of the same, and the sums of money therein specified, and the name or names of the person or persons, against whom such writ or writs, process or processes, shall be issued; and the person or persons for whom all and every, or any such writ or writs, process or processes shall be issued and what is done upon all and every or any such writ or writs, process or processes; *and* that they the said *J. R.* and *C. B.* or one of them, shall and will, in the space of ten days next after the levy or receipt by them, or either of them, or their, or either of their deputies, shall be made of any sum or sums of money, upon or by virtue of such extents or judicial writs, process or processes, if thereto required, pay, or cause to be paid, the said sum or sums of money, to the said *C. A.* and *R. G.* or one of them, or to such person or persons as they shall from time to time nominate and appoint to receive the same, they the said *C. A.* and *R. G.* or one of them, giving a note or precept in writing, under his or their hand or hands, testifying the receipt of all such sum or sums of money, as shall be by them, or either of them, so received: *And*, that it shall be in the power of the said *C. A.* and *R. G.* notwithstanding any thing in these presents contained, upon complaint to them made of the miscarriage of any bailiff, within the said county of *M.* in the duty of his place, to put out, discharge, and displace any such bailiff from his further employment as bailiff, for so much of the said time as shall be then to come: *And* likewise, that the said *J. R.* and *C. B.* or one of them, shall and will, from time to time and at all times hereafter, give due notice to the said *C. A.* and *R. G.* of all such personal attendances as shall from time to time be required, or requisite to be made by the said *C. A.* and *R. G.* or either of them in the county of *M.* as sheriff of the said county and be attending on and assisting to the said sheriff, wherein such personal attendance shall be required; and that the said *J. R.* and *C. B.* and each of them shall be aiding and assisting in the raising and levying such force of men, horses, and arms, within the said county of *M.* as the said *C. A.* and *R. G.* shall be enjoined to raise, and levy; and shall from time to time, and at all times, as occasion shall be and require, give their personal attendance on the said *C. A.* and *R. G.* and each of them, for their doing, performing, and executing all such thing and things as shall be requisite on their behalf: *And further*, that the said *J. R.* and *C. B.* shall, during the said term or time, well, truly, and faithfully, do, execute and

perform, all and every act and acts, matters, thing and things whatsoever, incident or belonging to the said office of under-sheriff of the said county of *M.* and to the utmost and best of their means, skill and power, shall, and will, well and truly levy, collect and gather all and singular such sum and sums of money as do in any wise concern or belong to the said sherriffalty, or sherriff of the said county of *M.* and also post-fines, *pro licentia concordandi*, forfeitures, profits, seizures, fee-farm rents, pipe silver, exchequer silver, extracts of all goods of traitors, felonious persons, out-laws, and all and every such sum and sums of money, forfeitures, entries and demands whatsoever, as shall be at any time or times extracted, charged, or imposed for the use of our sovereign lord the King, his heirs and successors, or for or by reason of any extracts of writs, process of green-wax, or otherwise, directed out of the court of Exchequer, or Crown-office, or any of the courts of record at *Westminster*, or elsewhere, and commanded, directed, or appointed to be levied or gathered by the said sherriff of the said county of *M.* and of the same, and of every of them, and every part thereof, shall in due time, from time to time, make a true and just account, and due satisfaction and payment thereof, to the use of our sovereign lord the King, his heirs and successors, into the receipt of the Exchequer, by tally or tallies, in due form, or into such other courts as the case shall require; *and also*, shall take of the Pell-office a *constat* of every such payment and tally struck; and shall likewise take out and obtain all other acquittances, meet and necessary for the manifestation of any such payment as the case shall require, and all such constats and acquittances shall and will from time to time deliver to the said *C. A.* and *R. G.* or one of them, within six days after every or any such payment made, if thereunto required; *and* shall also from time to time from thenceforth, keep harmless and indemnified the said *C. A.* and *R. G.* and each of them, their, and each of their heirs, executors, and administrators, and their, and each of their goods, chattels, lands, tenements, and estates, of from and against our said sovereign lord the King, his heirs and successors, in respect of all and every sum and sums of money to be had, levied, or received, by the said *J. R.* and *C. B.* or either of them, for the use of our sovereign lord the King, his heirs or successors, or which ought to be had, levied or received by him the said *J. R.* as under-sherriff or by the said *C. A.* and *R. G.* as sherriff of the said county of *M.* to and for the use of our sovereign lord the King, his heirs or successors: *And moreover*, that the said *J. R.* and *C. B.* or one of them, their, or one of their executors, administrators, or assigns, shall and will, at his or their own proper costs and charges, in and by all things join with the secondaries for the time being, for both the Compters of *London*,

don, and with all other clerks appointed, or to be appointed by the said *C. A.* and *R. G.* as sheriffs of the city of *London*, for supplying the said office of under-sheriffs of *London*, commonly called by the name of secondaries of the Compters of *London*, or the sheriffs clerks, for the orderly and duly proceeding for the passing the accounts for *London* and *Middlesex*, in one account, according to the statute or statutes in that case made and provided, touching sheriffs accounts; And shall and will without delay jointly proceed in the said accounts, in one, as well as the particulars thereof, with the auditor or auditors assigned to take the said accounts, as also in passing thereof in one by the like agreement and consent, and also in the declarations thereof before the barons of the said court of Exchequer, and before any other person or persons to be thereunto authorized, and being ready for the declaration thereof, shall also, at the like proper costs and charges of the said *J. R.* and *C. B.* or one of them, procure the said auditor and auditors to attend some or one of the barons to take the said declaration, and to make the usual allowances of the said accounts, for so much thereof as appertains to the said sheriff or county of *M.* and also subscribe the whole accounts of *London* and *Middlesex*, and the duplicate thereof, to the end that one part thereof, which shall be the charge remaining with our sovereign lord the king, and the lord treasurer, and commissioners of the treasury, and remembrancer of the exchequer, may be answered with the other part and duplicate thereof, subscribed by some of the officers of the exchequer for the said sheriff; all which shall be solicited and followed, to be got, and shall be got, finished, and effectually perfected, by the said *J. R.* and *C. B.* or one of them, at their or one of their own proper costs and charges, for so much thereof as shall concern the said county of *M.* and in all offices and places through which the same ought duly to pass; and that the same shall be performed and done with due speed, and without delay and unnecessary intermission, and shall be done and brought to the Pipe-office in that due time and manner which the statute hath ordained concerning sheriffs accounts, as by the statute and statutes in that behalf is limited and appointed; and likewise be dispatched from the Pipe-office with convenient expedition; and on, and before the day which shall be in the year of our Lord 17 procure sufficient discharge, and formal *quietus est*, in due form of law, at the proper costs and charges of the said *J. R.* and *C. B.* or one of them, for so much of the said account as shall concern the said *C. A.* and *R. G.* as sheriff of the county of *M.* as aforesaid, their heirs, executors, or administrators, and every of them; so that their and each of their lands, tenements, goods, chattles and estates, may at all times thereafter stand free and clear from all damages, charges, and accounts,

counts, for or by reason of the said office or place of sheriff of the said county of *M.* *And further*, that the said *J. R.* and *C. B.* or one of them, at their, or one of their own proper costs and charges, shall defray, bear, pay, and lay out, all such charges of what nature soever, as have been heretofore laid out by any undersheriff of the said county of *M.* at the sessions held at the *Old Bailey*, within the city of *London*; and shall also, at their, or one of their proper costs and charges, defray, bear, and lay forth all charges whatsoever, which are or shall be expended at the several sessions held in the said county of *M.* at any time or times, during the said time or term, for which the said *C. A.* and *R. G.* or either of them, shall continue to be sheriff of the said county of *M.* *And shall and will freely discharge and save harmless the said C. A. and R. G. and each of them, their, and each of their heirs, executors or administrators, of and from the same: And further*, that the said *J. R.* and *C. B.* or one of them, shall at their, or one of their own proper costs and charges, defray, bear, pay, and lay forth all charges and other expences whatsoever, that are or ought to be laid forth or disbursed, in, for, or about the executing or punishing all and every traitors and felons, and all other persons whatsoever, that are or shall be condemned or attainted for treason, felony, and persons adjudged to be whipt, set upon the pillory, or otherwise punished according to law, whatsoever or howsoever in the said county of *M.* and of such prisoners as shall be from time to time convicted and attainted, shall and will make, or cause to be made, due execution according to the judgment or sentence against every of them to be pronounced, at any time or times during the said term or terms; *And also* that the said *J. R.* and *C. B.* or either of them, their or either of their deputy or deputies, clerk or clerks, bailiff or bailiffs, or any other officer or officers that shall be employed, retained, admitted, appointed or permitted, by, or under the said *J. R.* and *C. D.* or either of them, at any time or times during the said term or times shall not without the special consent of the said *C. A.* and *R. G.* in that behalf in writing obtained, under their hands, detain or keep above the space of forty-eight hours, in their or any of their custody, house, room, or chamber, or in any other house, room, chamber, or place whatsoever, any prisoner, or prisoners, by him, or them, or any of them arrested, or to be arrested, or taken within the said county of *M.* for any debt, damages, fine, suit, or cause, for above the value of 20*l.* of lawful money of *Great Britain*, or for several or any cause or causes together, exceeding the said sum of 20*l.* but the same prisoners, and every of them so arrested and taken, for above the said sum of 20*l.* shall forthwith, and without delay, commit, or cause to be committed, to the gaol or prison of *Newgate*, or one other

other common gaol or prison, appointed or to be appointed for such purpose, for the said county of *M.* there to remain until such prison or prisoners shall be discharged by due course of law, or shall otherwise be let to bail, all and every such prisoner and prisoners, upon good and sufficient securities and bail, according to the form of the statute in that case made, if so be the law shall require and warrant the said sheriff, or the under-sheriff of the said county of *M.* to let to bail such prisoner or prisoners, and not otherwise; and that he the said *J. R.* with the concurrence and assistance of the said *C. B.* as aforesaid, shall and will, well, truly, and faithfully providently, circumspectly, and diligently do, perform, execute, and accomplish all and singular acts, matters, and things which to the said office of sheriff or under-sheriff of the said county of *M.* during the said term and time that they the said *C. A.* and *R. G.* shall continue in the said office, do or shall appertain and belong, or ought to be by the said sheriff or under-sheriff performed and accomplished; *And also*, that the said *J. R.* and *C. B.* and all and every the bailiffs, clerks, servants, and ministers, that shall be employed by or under them, or either of them, in the execution of the said office, to the utmost of his and their, and every of their power, and as much as in them, or any of them, is or shall be, all and singular the liberties and franchises to the said mayor, commonalty, and citizens of the city of *London*, and to the said *C. A.* and *R. G.* as sheriffs of *London*, or sheriff of the county of *M.* belonging and appertaining, shall and will well and truly observe, perform, maintain and keep, in all places within the said county of *M.* and shall not so far as in the power of the said *J. R.* and *C. B.* or either of them, shall lie, permit or suffer the said liberties and franchises, or any of them, to be broken, infringed, or violated in anywise: *And further* that they the said *J. R.* and *C. B.* or one of them, shall and will duly and justly perform, execute, and keep, all such articles and matters whatsoever, as are contained, mentioned and expressed in the condition of the bond or recognizance, which the said *C. A.* and *R. G.* or either of them with sureties, have or hath, or shall enter into and acknowledge to the use of our sovereign lord the king, in his majesty's court of Exchequer, concerning the said office of sheriff of *M.* save only such as do necessarily require the personal attendance of the said *C. A.* and *R. G.* or either of them; *And* the said *C. A.* and *R. G.* do covenant promise and grant, by these presents, for themselves and each of them severally, and for their and each of their several heirs, executors, and administrators, to and with the said *J. R.* and *C. B.* their executors and administrators, that all and every the covenants and covenant, obligations, taken or to be taken, in the names of the said *C. A.* and *R. G.* as sheriff of the said county of *M.* either of or from
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the several bailiffs in their places or of or from any person or persons arrested or to be arrested, within the county of *M.* within the time that they or either of them shall continue in the said office, by virtue of any writ, precept, or mandate whatsoever, so nevertheless, as the said *C. A.* and *R. G.* and each of them, their and each of their heirs, executors, and administrators, shall be secured, kept harmless, and indemnified by the said *J. R.* and *C. B.* their heirs, executors, and administrators, for, touching, or concerning the said office of sheriff, shall be at the only use of the said *J. R.* and *C. B.* their executors and administrators, for their better security, and being saved harmless of and from any damages, losses, troubles and expences, that shall or may grow, come or happen to them, by reason of the misdemeanors or negligences of any of the said bailiffs, or any other person or persons arrested or to be arrested, or for or by reason of his or their non-appearances, or otherwise howsoever: *And* that they the said *J. R.* and *C. B.* their executors and administrators, performing the covenants herein contained on their parts to be performed, shall and may at their own proper costs and charges, sue the said covenants and obligations in the name of the said *C. A.* and *R. G.* or the survivor of them, or the executors or administrators of such survivor by virtue of these presents, and receive, take, and enjoy to the proper use and behoof of the said *J. R.* and *C. B.* their executors, administrators and assigns, all such lawful benefits and recompences as shall arise or come upon or by reason of the said covenants, obligations and suits, and every or any of them, in any manner of wise as they the said *C. A.* and *R. G.* or either of them, their or either of their executors or administrators might lawfully and equitably have done, if these presents had not been made: *Provided nevertheless* and so that the said *J. R.* and *C. B.* their executors, administrators and assigns, do always indemnify and save harmless the said *C. A.* and *R. G.* and each of them, their and each of their executors and administrators, and their, and each of their goods, chattles, lands, tenements, and estates, of and from all and all manner of costs, charges, damages and sums of money whatsoever, which may in anywise be awarded, adjudged, ordered, decreed, or recovered against the said *C. A.* and *R. G.* or either of them, their or either of their heirs, executors, or administrators, by reason, means, or occasion of the putting in suit as aforesaid, any of the aforesaid covenants or obligations by the said under-sheriff, his executors, administrators, or assigns, in the name or names of the said *C. A.* and *R. G.* or either of them their or either of their executors or administrators, which they the said *J. R.* and *C. B.* do, and each of them, doth hereby for himself severally, and for his respective executors and administrators covenant to do; *And also,*

also, that it shall and may be lawful to and for the said *J. R.* with such concurrence of the said *C. B.* as aforesaid, they observing and performing the said covenants and agreements herein contained on their parts to be performed, to have and enjoy the said office of under-sheriff of the said county of *M.* subject to the proviso hereinafter mentioned, and to keep all and singular courts, tourns, leets, and county courts, for the said time, at the times and places duly appointed for the same, according to the laws and statutes of this realm, and the customs and usages of the county of *M.* and that in such cases as aforesaid, they the said *C. A.* and *R. G.* as far as they lawfully may, without any breach or infringement of their duty as sheriff of the said county of *M.* do covenant, promise and grant, that the said *J. R.* and *C. B.* shall and may have and take all lawful fees, dues, profits, and commodities, that shall or may be lawfully had, gotten, received, or become due to the said sheriff, by virtue or means of the said office of sheriff of the said county of *M.* to the proper use of them the said *J. R.* and *C. B.* without the contradiction or denial of the said *C. A.* and *R. G.* or either of them to be given; and also that he the said *J. R.* shall and may have, receive and take to and for the proper use of the said *J. R.* and *C. B.* (in case the said *J. R.* shall be continued in the said office of under-sheriff of the said county of *M.* during the sheriffalty of the said *C. A.* and *R. G.* and shall duly pass the accounts of the said *C. A.* and *R. G.* as sheriffs of the said county, and procure a good and sufficient discharge to them in respect thereof, according to the intent of the covenants herein before in that behalf contained) the sum of 119 *l.* 3 *s.* being the allowance for passing the accounts of the sheriff of the county of *M.* made or given to the sheriff of the said county of *M.* for the time being, by an act of parliament made in the third year of the reign of his late majesty king *George the First*, entitled an act for the better enabling the sheriffs to sue out their patents and pass their accounts; And the said *C. A.* and *R. G.* do hereby nominate, constitute, and appoint the said *J. R.* their lawful attorney, for them and in their names, but to the use aforesaid, to receive from the receipt of his majesty's exchequer, or from such person or persons as shall be appointed to pay the same, the said sum of 119 *l.* 3 *s.* and on receipt thereof, to make, execute, and give for them and in their names, a full and sufficient receipt and discharge for the same; they the said *C. A.* and *R. G.* and each of them, their and each of their executors and administrators, and their and each of their goods, chattels, lands and tenements, being saved harmless and indemnified from time to time by the said *J. R.* and *C. B.* according to the true intent and meaning of these presents: And whereas, it is intended by these presents, that the said *J. R.* and *C. B.* shall receive and
account

account for, in the names of the said *C. A.* and *R. G.* as sheriff of *M.* such of his majesty's revenue arising within the said county of *M.* and during the continuance of him the said *J. R.* in the said office of under-sheriff, as usually hath been received by other under-sheriffs; *And also*, that the said *J. R.* and *C. B.* shall and they do hereby accordingly agree to lay out and disburse for his majesty's service, such monies as heretofore have usually been paid, laid out and disbursed by former under-sheriffs of the said county, whereby the ballance of accounts between our lord the king, and the said *C. A.* and *R. G.* (if any should be due from our said lord the king, to the said *C. A.* and *R. G.* as sheriffs of the said county) will of right belong to them the said *J. R.* and *C. B.* wherefore to enable him the said *J. R.* to receive the ballance of the said account, if any shall appear to be due to the said *C. A.* and *R. G.* as sheriff of the said county, they the said *C. A.* and *R. G.* do hereby nominate, constitute and appoint him the said *J. R.* their lawful attorney for them the said *C. A.* and *R. G.* and in their names, but to the uses aforesaid, to receive at the receipt of his majesty's exchequer, from such person or persons who shall be appointed to pay the same, such surplus or ballance of the said account, (if such shall be due), and on receipt thereof to make, execute and give in the names of them the said *C. A.* and *R. G.* a full and sufficient discharge for the same. *Provided nevertheless*, and it is hereby declared and agreed by and between all the parties to these presents, and particularly by the said *J. R.* and *C. B.* for themselves, their heirs, executors, and administrators, that they the said *J. R.* and *C. B.* for themselves, their heirs, executors and administrators, shall and will well and truly account for, pay, and deliver to the said *C. A.* and *R. G.* or one of them, their, or one of their executors, or administrators, all such sum and sums of money, fees, dues, perquisites, profits and emoluments whatsoever, which have been heretofore usually had and received by former sheriffs of the said county of *M.* and not by the under-sheriff for the time being, any thing herein before contained to the contrary thereof in any wise notwithstanding. And the said *J. R.* and *C. B.* for themselves jointly and severally, and for their respective heirs, executors, and administrators, do, and each of them doth hereby covenant, promise, grant and agree, to and with the said *C. A.* and *R. G.* their executors and administrators, that they the said *J. R.* and *C. B.* their executors and administrators, shall and will from time to time and at all times from henceforth, save, keep harmless and indemnified them the said *C. A.* and *R. G.* and each of them, their and each of their heirs, executors and administrators, of and from all and all manner of action and actions, cause and causes of action and actions, suits, troubles, fines, amerciements, pains, penalties, forfeitures, defaults, and all damages,

damages, matters and things whatsoever, relating to the said office of sheriff of *M.* excepting only what shall happen by their personal default, negligence and omission of them the said *C. A.* and *R. G.* or either of them, or their or either of their proper acts. *Provided nevertheless,* that it shall and may be lawful to and for the said *C. A.* and *R. G.* or either of them, at any time or times, during their continuing the said *J. R.* in the said office of under-sheriff, at their or either of their wills and pleasures to command the said *J. R.* and *C. B.* or either of them, or his or their deputy or deputies, clerk or clerks, to attend them the said *C. A.* and *R. G.* or either of them, with the freeholders books, wherein the freeholders names of the county of *M.* are or shall be inserted and entered, and that the said *C. A.* and *R. G.* or either of them, at their wills and pleasures, shall from time to time nominate and return such juror and jurors, inquest and inquests, to be returned and empannelled as jurors, to enquire and serve in his majesty's courts at *Westminster*, or before any of his majesty's court or courts, commissioner or commissioners of *oyer and terminer*, gaol delivery, commission of the peace, justice or justices of the peace, and all and every other person and persons, having lawful authority to command the said *C. A.* and *R. G.* as sheriff of the said county, to cause to come before them, or any of them, any juror or jurors, inquest or inquests whatsoever, to serve for or in the said county, or upon any issue whatsoever arising to be tried, or any inquisition to be taken within the said county of *M.* And the said *J. R.* and *C. B.* for themselves, their heirs, executors and administrators, *do*, and each of them *doth*, covenant and promise to and with the said *C. A.* and *R. G.* and each of them, their and each of their executors and administrators, by these presents, that they the said *J. R.* and *C. B.* or one of them, shall and will from time to time, ingross, impanell, and return, or cause to be ingrossed, impanelled and returned, and summoned such juror or jurors, inquest and inquests, so from time to time nominated and appointed to be returned by the said *C. A.* and *R. G.* or either of them, with their names subscribed to such returns, and none other, together with the like process to them directed in that behalf, and shall and will always, on notice, attend with the said freeholders book on them the said *C. A.* and *R. G.* or either of them, and permit them to nominate and return such juror and jurors, inquest and inquests, in manner aforesaid; any thing in these presents contained to the contrary thereof notwithstanding. And further, that they the said *J. R.* and *C. B.* or either of them, their or either of their deputies, clerks or servants, shall not at any time or times, during the said time or term which the said *C. A.* and *R. G.* or either of them shall continue to be sheriff of the said county of *M.* ingross, return,
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impanel, or cause to be ingrossed, returned or impanelled, any inquest or jury, for the trying any traitor or traitors, without the approbation of the said *C. A.* and *R. G.* first had and obtained; nor open, execute, or return any letters or commandments from the king's majesty, the privy council, or the secretaries of state, directed to the sheriff of *M.* without first giving notice to the said *C. A.* and *R. G.* and taking their directions therein, in case they or either of them, at the time of the receipt or delivery of any of the said letters or commandments shall be resident in the city of *London*, and county of *M.* or either of them. *Provided further*, that it shall and may be lawful to and for the said *C. A.* and *R. G.* or either of them, at any time or times, during their continuing the said *J. R.* in the said office of under-sheriff, at their wills and pleasures to prohibit and forbid the said *J. R.* and *C. B.* or either of them, their or either of their deputy or deputies, clerk or clerks, by a note in writing under their hands, from opening, sending, executing, or returning any writ or writs, precept or mandate, that shall be directed to the sheriff of *M.* for the electing any member or members to serve in parliament in or for the said county of *M.* to the end, the said *C. A.* and *R. G.* or one of them, may personally and duly open, send, execute and return the same; *And* in such case the said *J. R.* and *C. B.* for themselves severally, and for their several heirs, executors and administrators, *do*, and each of them *doth*, hereby covenant and promise to and with the said *C. A.* and *R. G.* and each of them, their and each of their executors and administrators, that they the said *J. R.* and *C. B.* will not open, send, execute or return any such writ or writs, precept or mandate, without the special directions of the said *C. A.* and *R. G.* or one of them, first had and obtained in writing, whereby to hinder or prevent the said *C. A.* and *R. G.* from opening, sending, returning or executing any such writ or writs in their proper persons: *Provided always*, and it is the true intent, meaning and agreement of all the said parties to these presents, that if the said *J. R.* and *C. B.* or either of them, shall not well, honestly and carefully demean and behave themselves in the said office of under-sheriff of the said county of *M.* in all business, matters and things thereunto belonging, to the good liking and approbation of the said *C. A.* and *R. G.* that then and from thenceforth it shall and may be lawful to and for the said *C. A.* and *R. G.* or either of them, at any time or times during their or either of their continuance in the said office of sheriff of the said county of *M.* to displace and remove the said *J. R.* and *C. B.* or either of them so misbehaving, out of, and from the said place and office of under-sheriff aforesaid, for and during the then residue of the said term of the said time and term hereby granted; any thing in this present indenture contained,

tained, or any other matter whatsoever to the contrary thereof in anywise notwithstanding. *And* the said *J. R.* and *C. B.* for themselves severally, and for their several heirs, executors and administrators, and every of them do and each of them *doth*, covenant, promise and agree, to and with the said *C. A.* and *R. G.* their executors and administrators by these presents, that in case of such displacing of the said *J. R.* and *C. B.* or either of them as aforesaid, they the said *J. R.* and *C. B.* or either of them, their or either of their executors and administrators, after his or their being so displaced, shall not nor will act as under-sheriff of the said county, in anywise howsoever, during the shrievalty of the said *C. A.* and *R. G.* and in case of such removal as aforesaid, they the said *J. R.* and *C. B.* or one of them, shall and will deliver unto the said *C. A.* and *R. G.* or one of them, their or one of their executors or administrators, all and all manner of books belonging or relating to the said office, and all bail-bonds, process and mandates, and other things whatsoever relating to the said office which shall then be depending or remaining, or be in the hands, custody or disposal of the said *J. R.* and *C. B.* or either of them, their or either of their clerks, bailiffs, or servants, unexecuted or not returned, whole, safe and uncanceled, and shall and will also pay and deliver to them the said *C. A.* and *R. G.* or one of them, all sum and sums of money, goods and chattels, as shall be taken, paid or levied in execution, or for the use of the king's majesty, his heirs or successors, by virtue of the said office of sheriff or under-sheriff of the said county of *M.* within two days next after request in such behalf shall be made by them the said *C. A.* and *R. G.* or either of them, their or either of their heirs, executors and administrators. *And lastly*, they the said *J. R.* and *C. B.* for themselves severally, and for their several and respective heirs, executors and administrators, *do*, and each of them *doth*, hereby covenant, promise and grant to and with the said *C. A.* and *R. G.* and each of them, their and each of their executors and administrators by these presents, that they the said *J. R.* and *C. B.* or one of them, shall and will bear, pay and discharge all rewards or sums of money payable, or to be paid by the said sheriff of *M.* by virtue of any act or acts of parliament already made, or which at any time or times hereafter, during the said *J. R.*'s continuance in the said office, shall be made for apprehending or convicting any person or persons, for any felony or robbery committed, or to be committed, on the king's highway, or for any burglary or felonious breaking or entering any houses, or counterfeiting, clipping or diminishing the coin of this kingdom, or for any other matter or thing.

thing, that already is or shall be hereafter, for the time and term of his continuing in the said office of under-sheriff, by any act or acts of parliament imposed on the sheriff of *M.* and indemnify the said *C. A.* and *R. G.* and each of them, their and each of their heirs, executors and administrators, of and from the same.

In witness &c.

C.

Indentures of Covenant, between the Sheriff, Bailiff and his Sureties.

THIS Intenture, made the _____ day
in the _____ year of our Lord 17 _____ Between:
sheriff of the county of _____
of the one part, and *A. B.* of, &c. yeoman, *C. D.* of, &c.
E. F. of, &c. and *G. H.* of, &c. of the other part, *Witnesseth*, That the said sheriff, at the special instance and request of the said *A. B.* *Hath* granted, nominated and appointed, and by these presents *Doth* grant, nominate and appoint the said *A. B.* to be one of the bailiffs of the said sheriff, during all the time that he the said *A. B.* shall continue sheriff of the said county; *And* that the said bailiff shall take to his own use all lawful fees and profits to him belonging, as one of the bailiffs aforesaid, reserving always to the said sheriff all fees which shall from time to time happen, grow due, or accrue, by reason of the executing or serving any manner of execution, *capias ad satisfaciendum, fieri facias*, or extent, and also all other fees, dues, profits and emoluments to the said sheriff incident or belonging. *And* the said *A. B. C. D. E. F.* and *G. H.* for and in consideration of the premisses, for themselves severally their and every of their heirs, executors and administrators by these presents, covenant, promise and agree to and with the said _____ his executors and administrators, in manner and form following, *that is to say*, That he the said *A. B.* from time to time, and at all times during the said sheriffalty, shall, in and by all things in his said place or office, well, truly, lawfully and honestly bear and behave himself, and faithfully and diligently serve and attend the said sheriff, and his under-sheriff of the said county, and every of the deputies of them the said sheriff or under-sheriff in the said office, and in due and lawful manner, all their and every of their lawful commands or directions, touching any manner of service incident or belonging to the said sheriff of the said county, or to any bailiff of the said county, willingly, readily lawfully and dutifully shall do, execute and perform: That the said *A. B.* shall at all time or times hereafter, during the said sheriffalty,

sherivalty, lawfully execute and serve all and all manner of briefs, warrants, precepts or mandates, directed or to be directed to him, by or in the name of the said sheriff, or by or in the name of any officer or person in that behalf lawfully authorized, which shall be tendered or come to the hands of the said *A. B.* to be executed or served; and shall and will make true, direct and lawful return and returns, and answer, in writing, subscribed with his own hand, of, to, or upon, every such brief, warrant, precept or mandate, and shall deliver the same, together with such returns, to the said sheriff or under-sheriff, at the public office of the said sheriff, on or before the days or times of the return or returns of such brief, warrant, precept or mandate, without any manner of fraud or delay, whether the same shall be demanded or not:—*That* the said *A. B.* during the said sherivalty, shall receive and take into his custody, alone, or jointly with any other bailiff or bailiffs of the said county, the body and bodies of such prisoner and prisoners, which the said sheriff, under-sheriff, or any of his or their deputy or deputies, shall, by warrant upon any writ of *habeas corpus*, tender, and require the said *A. B.* to receive and take into his safe custody, and shall, by virtue of such warrant and writ of *habeas corpus*, safely conduct and carry such prisoner or prisoners to be delivered, before such court or courts, judge or judges, or to such sheriff or sheriffs, gaoler or gaolers, as the said writ of *habeas corpus* and warrant to him directed thereon shall appoint, and shall safely conduct and deliver such prisoner and prisoners before such court or judge, or into the safe custody of such sheriff or sheriffs, gaoler or gaolers, as the said writ or writs shall direct, and take the receipt of such sheriff or sheriffs, gaoler or gaolers, indorsed upon such writ or writs of *habeas corpus*, for saving harmless the said sheriff and under-sheriff in that behalf:—*That* in case any such prisoner or prisoners shall be remanded, then he the said *A. B.* shall forthwith safely convey and remit every such prisoner to the custody of the keeper of the gaol of _____, or to the keeper or keepers of any other gaol or place of security appointed by law to receive prisoners from the said sheriff, arrested or taken in execution on any civil process:—*That* the said *A. B.* hath not heretofore suffered to go at large or to escape, nor shall hereafter, at any time or times, for and during the time that the said _____ shall continue sheriff of the said county, set at liberty, or suffer to go at large, or to escape, any person or persons, whatsoever heretofore arrested or taken, or which shall hereafter be arrested or taken, by the said *A. B.* alone, or together with or by any other bailiff or officer, by his, their, or any of their body or bodies, by virtue of any writ, warrant,

warrant, precept or mandate whatsoever of the said sheriff, or which now are, or hereafter shall be in, or committed to, the charge or custody of him the said *A. B.* alone, or together with or by any other bailiff or officer, as prisoner or prisoners of or to the said sheriff, for any cause or causes whatsoever, without a lawful and sufficient warrant for the discharging of such prisoner or prisoners:—*That* the said *A. B.* shall not at any time hereafter deliver, or suffer any goods or chattels to be taken out of his possession, which shall be seized or taken in execution by him alone, or together with any other bailiff or officer of the said sheriff, or which shall be delivered or left in the hands or custody of him the said *A. B.* by the said sheriff or under-sheriff, their deputies or clerks, without a lawful and sufficient warrant for the delivery of the same, but shall make, or cause to be made, a just, true and perfect inventory of all such goods by him so seized, or which shall come to his hands, within the space of twenty-four hours after the same shall be seized or come to his hands, as aforesaid, and shall cause the same to be appraised by two appraisers, one of them to be appointed by the said sheriff, and shall, so soon as conveniently may be after such appraisement made, deliver a copy thereof, signed by the said *A. B.* to the said under-sheriff, his deputy or clerk, or one of them, at the public office of the said sheriff; and likewise shall and will, when and so often as any goods or chattels by him so seized or taken, are sold (if the money for which such goods shall be sold shall come to the hands, custody or possession of the said *A. B.*) forthwith pay, or cause to be paid, to the said under-sheriff, his deputy or clerk, or some or one of them, all such sum and sums of money for which the same shall be sold:—*That* the said *A. B.* shall not remove any goods or chattels which at any time or times, during the continuance of the said sheriffalty, he may seize or take in execution, within the said county, from the place where such goods and chattels shall be so seized or taken in execution, before the rent (if any due) shall be paid to the landlord or landlords of the premises whereon any such goods or chattels shall have been seized or taken in execution, pursuant to the statute in that case made and provided:—*That* the said bailiff, from time to time, and at all times during the said sheriffalty, shall truly and diligently levy, collect and gather all and every the several sum and sums of money wherewith the said sheriff shall stand charged or chargeable in his majesty's court of Exchequer at *Westminster*, or any other court whatsoever, to be levied, collected and gathered, within the said county, and for levying whereof, the said bailiff shall have a sufficient warrant delivered or tendered to him:—*That* the said bailiff shall well and truly satisfy

satisfy and pay all and every the same sum and sums of money to the said sheriff, or to the said under-sheriff, their or one of their executors or administrators, at or before the return of such warrant, which for levying the same shall be delivered or tendered to the said bailiff as aforesaid, so as the said sheriff may make payment of the said money into the said court of Exchequer in due time, and may pass his perfect account at the time limited by the said court, and that the said bailiff shall, upon request, subscribe his name, testifying the receipt of every such warrant:—*That* the said bailiff shall, during the said sheriffalty, seize and take into his hands and custody all goods and chattels of felons, fugitives, and persons outlawed or waived, or goods or chattels waived or strayed, which shall happen to be found, had or taken, within the said county; and thereof, and of all other sums of money, fees and profits, in anywise due, belonging or incident to the said sheriff or under-sheriff, which shall at any time happen to come to the hands or custody of the said *A. B.* by reason of executing the said place or office of one of the bailiffs of the said sheriff, shall make a just and true account, and payment or delivery, to the said sheriff or under-sheriff, when and so often as the said *A. B.* shall be thereunto required:—*That* the said bailiff, during the said sheriffalty, shall diligently and carefully, in his own person, in due manner, attend at all and every general and quarter session or sessions of the peace at _____ and sessions of oyer and terminer, and gaol delivery, to be holden for the said county, at _____, or at any place or places within the said county, or elsewhere, and during the continuance of every such session and sessions, and of every adjournment or adjournments thereof, and there do, perform, and accomplish all such things as to the said office of bailiff shall appertain:—*That* the said _____ during the said sheriffalty, so often as he shall arrest, or take in execution, any person or persons, by virtue of any warrant whatever, before the person or persons so arrested or taken, be carried to any public or other house, or before any liquor or meat shall be called for, he the said bailiff shall shew and deliver to the person or persons so arrested, or taken in execution, copies of the following clauses, Part of an act of parliament passed in the 22d year of the reign of his late majesty king George the Second, intituled *An act for the relief of debtors with respect to the imprisonment of their persons, and to oblige debtors who shall continue in execution beyond a certain time, and for sums not exceeding what are mentioned in the act, to make discovery of, and deliver upon oath their estates, for their creditors benefit; and also that the said A. B. shall suffer the person so arrested, or any friend of his to read*
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the same; which said clauses follow in these words: **BE IT THEREFORE ENACTED**, by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, that no sheriff, under-sheriff, bailiff, serjeant at mace, or other officer or minister whatsoever, shall at any time or times hereafter, convey or carry, or cause to be conveyed or carried, any person or persons by him or them arrested, or being in his or their custody by virtue or colour of any action, writ, process, or attachment, to any tavern, alehouse, or other publick, victualling, or drinking house, or to the private house of any such officer or minister, or of any tenant or relation of his, without the free and voluntary consent of the person or persons so arrested or in custody; nor charge any such person or persons with any sum of money, for any wine, beer, ale, victuals, tobacco, or any other liquor or things whatsoever, save what he, she, or they, shall call for, of his her or their own free accord; nor shall cause or procure him, her, or them, to call or pay for any such liquor or things, except what he, she, or they, shall particularly and freely ask for; nor shall demand, take, or receive, or cause to be demanded, taken, or received, directly, or indirectly, any other or greater sum or sums of money, than is or shall be by law allowed to be taken or demanded, for any arrest or taking, or for detaining, or waiting, till the person or persons so arrested or in custody, shall have given an appearance or bail, as the case shall require, or agreed with the person or persons, at whose suit, or prosecution, he, she, or they, shall be taken or arrested, until he, she, or they, shall be sent to the proper gaol belonging to the county, riding, division, city, town, or place, where such arrest or taking shall be; nor shall exact or take any reward, gratuity, or money, for keeping the person or persons so arrested, or in custody, out of gaol or prison; nor shall carry any such person or persons, to any gaol or prison, within four-and-twenty hours, from the time of such arrest, unless such person or persons, so arrested, shall refuse to be carried to some safe and convenient dwelling-house, of his, her, or their own nomination, or appointment, within a city, borough, corporation, or market-town, in case such person or persons, shall be there arrested, or within three miles from the place where such arrest shall be made, if the same shall be made out of any city, borough, corporation, or market-town, so as such dwelling-house be not the house of the person arrested, and be within the county, riding, division, or liberty, in which the person under arrest was arrested; and then and in such case, it shall and may be lawful to and for such sheriff, or other officer or minister, to convey or carry the person or persons so arrested, and refusing to be carried to such safe and convenient dwelling-house as aforesaid, to such gaol or prison as he, she, or they, may be sent to, by virtue of

of the action, writ, or process, against him, her, or them. And be it further enacted, by the authority aforesaid, that no sheriff, under-sheriff, bailiff, serjeant at mace, or other officer, or person, shall, at any time or times hereafter, take or receive any other or greater sum or sums, for one or more nights lodging, or for a day's diet, or other expences of any person or persons under arrest, or any writ, action, attachment, or process, other than what shall be allowed, as reasonable in such cases, by some order or orders already made, or which shall hereafter be made, by the justices of the peace, at some general or quarter-sessions, which shall be held for the county, riding, division, city, town, or place, where such arrest, or taking shall be, who are hereby authorized and required, with all convenient expedition, to make such standing order or orders, for ascertaining such charges and expences, within their respective counties, ridings, divisions, cities, towns, and jurisdictions, if the same hath or have not already been there made, and if any such order or orders, hath or have been there already made, such justices for the time being, at their respective general or quarter-sessions, are hereby authorized and required to vary or alter the same, from time to time, as there shall be occasion; and also are hereby required to cause a copy of every such order, and of every variation or alteration thereof, signed by the clerk of the peace of every such county, riding, division, city, town, or place, respectively to be put and kept up in some conspicuous place in the sessions-house, or some other proper place, of every such respective county, riding, division, city, town, or place, as such justices shall order, so as the same may be there seen and examined, as occasion may require. That the said *A. B.* during the said sherrivalty, shall immediately after any arrest by him made, by virtue of a warrant to him directed, by or in the name of the said sheriff, give notice of the same to the said under-sheriff, or to one of his clerks or deputies, at the public-office of the said sheriff, and duly enter the name of the person or persons by him so arrested, or taken in execution, and shall safely deliver into the prison, in the charge or custody of the gaoler, or keeper of the gaol of or to the keeper or keepers of any gaol, or place of security, appointed by law to receive prisoners from the said sheriff, arrested or taken in execution, by any civil process, within the space of twenty-five hours next after such arrest or taking, (except in the mean time he, she, or they, shall be lawfully discharged,) there to be safely kept until they shall be from thence duly discharged. And if it shall so happen, that the said *A. B.* shall keep or detain any person or persons, by him so taken in execution, in his own house, or elsewhere, and shall not deliver him, her, or them, into the gaol of or to the keeper or keepers of any other gaol or place of security,

rity, as aforesaid, within twenty-four hours next after such arrest or taking, that then, and in every such case, he the said bailiff shall well and truly pay, or cause to be paid, to the said sheriff, or under-sheriff, the sum of ten pounds, of lawful money, of *Great Britain*, for every hour that he the said *A. B.* shall keep or detain in his custody, out of the said gaol of , or other place of security, any person or persons, by him so arrested or taken, beyond and above the before limited time of twenty-four hours; except the said bailiff shall have licence in writing, under the hand and seal of the said sheriff, or under-sheriff, for the keeping and detaining in his custody any such prisoner or prisoners for a longer time — *That* if any return or returns, shall at any time or times be made, at the particular instance or desire of the said *A. B.* by or in the name of the said sheriff, to any writs, bills, or precepts, which shall or may at any time be declared or adjudged insufficient by any of his majesty's courts at *Westminster*, then, and in every such case, the said bailiff shall and will bear, satisfy, and pay to the said sheriff, or under-sheriff, all loss, costs, charges, damages, expences and amerciaments, which the said sheriff, or under-sheriff, shall in any manner suffer, sustain, pay, or be put unto, for or by reason of the making any such insufficient return or returns. — *That* if any writ or writs of attachment of contempt, hath or have issued, or shall hereafter be sued out and prosecuted against the said sheriff, for or by reason of the not bringing into court, the body or bodies of any person or persons, arrested, or taken by the said *A. B.* of or for whom he hath, or shall take any bail-bond to the said sheriff, or of or for whom the said bailiff ought to have taken any such bond, then, and in every such case, the said *A. B.* &c. shall, and will, well and faithfully bear, pay and discharge, to the said sheriff, or to the said under-sheriff, all losses, costs, charges, damages, and expences, which they, or any of them, shall, or may suffer, sustain, pay, or be put unto, for or by reason of any such writ or writs of attachment, or for or by reason of any person or persons, forbearing to execute, or further prosecute the same. — *That* if any copy or copies, of any warrant or warrants, shall be delivered, sent or certified to the said *A. B.* from the said sheriff, under-sheriff, deputy or clerk, as a copy or copies of any other warrant or warrants, or detainer or detainers, against any person or persons, arrested, or taken by the said bailiff, or delivered to him, or left at his house, or place of abode, for safe custody, by any other bailiff or bailiffs of the said sheriff, then, and in every such case, the said *A. B.* shall and will, if such copy or copies, shall happen to be against the person or persons arrested, or then in his custody,

custody, as bailiff aforesaid, safely keep him, her, or them, by virtue of such detainer or detainers, until he, she, or they, shall be discharged by due course of law; and upon everyailable writ or process, which shall appear from any such copy or copies, of the said *A. B.* shall and will take a good and sufficient bail-bond, if the same shall be tendered.—*That* the said *A. B.* shall and will, whenever he shall receive any copy or copies as aforesaid, give notice to the bailiff or bailiffs, who shall have the custody of the original warrant or warrants, or to whom the same is or shall be directed, to the intent that every such original warrant may be immediately returned to the said under-sheriff, deputy or clerk, at the public office of the said sheriff.—*That* if any copy or copies of any warrant or warrants, which shall or may be sent, delivered or certified to the said *A. B.* as aforesaid, shall not happen to be against the person or persons by him arrested, or then in his custody, the said *A. B.* shall immediately return every such copy, and give notice in writing thereof, to the said under-sheriff, deputies or clerks, at the public-office of the said sheriff.—*Provided always*, that the said bailiff, shall, immediately on the receipt of any warrant to him directed from the said sheriff, under-sheriff, or any other person or persons by them, or either of them, duly authorized, and signed by or in the name of the said sheriff, to discharge any prisoner or prisoners, or quit possession of any goods or chattels seized as aforesaid, discharge any such prisoner or prisoners, and quit possession of such goods and chattels.—*That* the said *A. B.* shall not, during the said sheriffalty, seize, or take in execution, the goods of, or attach, or arrest the body of, any ambassador or foreign minister, or the servant of any ambassador or foreign minister, or of any other person whatsoever, privileged or protected, without licence in that behalf first had and obtained, under the hand-writing of such person or persons, who for the time being have good authority to grant licence in that behalf.—*That* the said *A. B.* shall, and will, take good and sufficient bail-bonds, or bonds of appearance, (if the same shall be tendered) of all persons by him arrested, or taken onailable process, whereon he shall execute or serve any warrant or warrants, to him directed, by or in the name of the said sheriff, according to the form of the statute in such case made and provided; and that the said bailiff before he shall let to bail any person so arrested, or taken, shall procure a certificate in writing, under the hand of the said under-sheriff, his deputy, or clerk, purporting that there are not any other writ or process, then in the sheriff's office, against the person so arrested or taken.—*That* the said *A. B.* shall and will deliver to the said under-sheriff, deputies, or clerks, all bonds,ailable or otherwise, which he shall take

to the said sheriff, within two days after the same shall be taken; and if the said *A. B.* shall neglect or refuse so to do, then, for every such refusal or omission, he shall and will forfeit and pay to the said under-sheriff, deputies, or clerks, ten shillings of like lawful money.—*That* the said *A. B.* during the said sherrivaltie, shall execute to the said sheriff, a sufficient bail-bond to all writs, process, and precepts, which shall be delivered to the said sheriff against him; and shall appear thereto, and put in such bail as the same shall require, or render his body to the said sheriff, to the intent that he may be duly committed; and farther shall do and perform all such things as the law in that behalf shall require:—*And* also shall satisfy and pay unto the said sheriff, or to the said under-sheriff, all such sum and sums of money, for which any writ of execution shall be delivered to the said sheriff, against him the said *A. B.* or otherwise shall render himself a prisoner to the aforesaid sheriff thereupon.—*That* the said bailiff shall pay to the said sheriff, or under-sheriff, all loss or any sum or sums of money which they or either of them, shall suffer, or pay, for or by reason, or means of any writ or process delivered to the said sheriff against him.—*That* if any debt, damage, sum or sums of money whatsoever, shall at any time or times hereafter be recovered, adjudged, or decreed, against the said sheriff, for the escape, or suffering to go at large, any prisoner or prisoners whatsoever, or for taking insufficient bail of prisoners,ailable by law, or refusing, or neglecting to take sufficient bail, or for taking bail of such prisoners as by law are notailable, or by mistake in levying one person's goods for another, or for any other cause, where it shall appear that such escape or suffering to go at large, taking such goods, or other cause, was or were occasioned, made, done, committed, or suffered by the default, negligence, permission, or occasion of the said *A. B.* or any of his servants, or others by him entrusted or employed.—*That* in every such case, the said *A. B. C. D. E. F. &c.* or some of them, their, or some of their executors, or administrators, shall, well, and truly satisfy, and pay unto every such person or persons, who shall so recover against the said sheriff, or unto whom any thing shall be recovered, adjudged, ordered or decreed, all and every the same debts, damages, sum and sums of money, goods, or things so recovered, adjudged, ordered or decreed, without any further suit or delay, and shall thereof clearly exonerate, acquit and discharge the said sheriff, and shall likewise satisfy and pay unto the said sheriff, or to the said under-sheriff, all such sum and sums of money, as the said sheriff, or under-sheriff, or any of them, shall have disbursed, or expended, in defending any such suit, over and above the usual

usual costs, in any court or courts, against the said sheriff, in that behalf adjudged.—*That* the said bailiff, on the day of now next coming, shall deliver to the said sheriff, under-sheriff, deputies, or clerks at the public-office of the said sheriff, all warrants which may be hereafter granted, by, or in the name of the said sheriff, on any writ or process, returnable in the then next term, which shall remain in his hands not executed, to the end that the said sheriff may turn over to the succeeding sheriff, by indenture, all such writs and process, as shall remain in his hands unexecuted, pursuant to the statute in that case made and provided. *Provided nevertheless*, and it is covenanted, concluded and agreed upon, by and between the said parties to these presents, that when and so often as the said bailiff, shall make breach of any of the covenants, articles, and agreements, which, by, or on the behalf of him, are or ought to be observed, performed, fulfilled and kept, that then, and from thenceforth, it shall and may be lawful for the said sheriff, or the said under-sheriff, deputies, or clerks, to remove and put out the said bailiff, from his said office, or employment:—*And* in case of such removal, that he shall deliver, or cause to be delivered unto the said sheriff, under-sheriff, deputies, or clerks, all such warrant or warrants, precept or precepts, bond or bonds, writing or writings, whatsoever, which may or shall in any wise appertain or belong to the said sheriff, and also shall pay to the said sheriff, or under-sheriff, all and every sum and sums of money by him levied, received, or collected, by virtue of any such warrant, precept, or mandate of the said sheriff, and then remaining in his hands, the said sheriff, under-sheriff, deputies, or clerks, giving unto the said bailiff, a receipt or acquittance for the same.—*That* the said *A. B.* shall and will, during the said sheriffalty, before he shall execute or serve, or permit to be executed or served, any warrant, or mandate, in replevin to him directed, by or in the name of the said sheriff, take good and sufficient pledges and bonds in replevin, and shall and will deliver all such bonds, immediately after the execution thereof, to the said under-sheriff, deputies or clerks, at the public-office of the said sheriff, fair and uncanceled.—*That* the said *A. B.* shall and will well and faithfully bear, pay and discharge, to the said sheriff, or under-sheriff, all loss, costs, charges, damages, and expences, which hath, have, or shall at any time or times hereafter, be recovered, adjudged, ordered or decreed against them, or any of them, in any court of law, or equity, for or by reason of any insufficient pledges in replevin, taken by the said bailiff, to the said sheriff, or for or by reason of not taking good and sufficient pledges and bonds, upon any
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causes and considerations, them the said and thereunto moving, *have* and each of them, *hath* (as much as in them lie, and they lawfully may) deputed, ordained, constituted, authorized, and appointed, and by these presents *do*, and each of them *doth*, depute, ordain, constitute, authorize, and appoint, the said *Richard Akerman*, to be their gaoler or keeper, for and under them the said and of all and every such prisoner or prisoners, as now is, or are, in the custody or keeping of them the said and or any of their deputy or deputies, servants, or assigns in the gaol or prison of *Newgate*, who shall at any time or times hereafter, during the sherrivalty of them the said and be sent brought or committed prisoners to the said gaol or prison of *Newgate*, or delivered or committed into the custody or keeping of them the said and , or either of them, as sheriffs of *London*, or sheriff of *Middlesex*, by virtue or means of any writ or writs, process or processes, warrant or warrants, mandate or mandates, or otherwise on any pretence whatsoever, by any person or persons, having lawful authority in that behalf:—*But* subject nevertheless to the proviso, or power of displacing or removing the said *Richard Akerman*, from the said office of gaoler or keeper of *Newgate*, at the will and pleasure of the said and , or either of them, And they the said and *have*, and each of them *hath*, constituted and appointed, and by these presents *do*, and each of them *doth*, constitute and appoint the said *Richard Akerman*, for them, and in their names, or in the name of him the said *Richard Akerman*, and to and for the proper use of him the said *Richard Akerman*, to demand, take, and receive, all such just and lawful profits, benefits, commodities, advantages, fees, and perquisites, as shall and may be lawfully had, made, gotten, received, or become due, or as are, or shall be during the said sherrivalty of the said and , incident, belonging, or appertaining to the said place or office of gaoler or keeper of *Newgate*, arising therefrom, or by reason thereof in any wise howsoever, as a recompence to the said *Richard Akerman*, for his trouble, risque, and care in the execution of the said office of gaoler or keeper of *Newgate*, and undertaking at his own proper costs and charges, from time to time, during the sherrivalty of the said and , or either of them, and his the said *Richard Akerman*'s being continued the gaoler or keeper of the said gaol of *Newgate*, by the said and , or either of them, to find, provide, and be at the expence of all necessary goods, utensils, and furniture, for the use of the said gaol or prison of *Newgate*, and also all requisite and necessary iron fetters, locks, belts,

bolts, manacles, handcuffs, and other cuffs, ropes, and other things, usually found and provided by any gaoler or keeper, in or about the said prison, for the safe custody of the prisoners committed, or to be committed, during the said sherrivalty of the said and , thereto, according to his the said *Richard Akerman's* covenant, hereinafter for that purpose mentioned;—*And also*, in consideration of the said and their heirs, executors, and administrators, shall be freed and discharged by the said *Richard Akerman*, his heirs, executors, and administrators, from time to time, during his continuance in the said office of gaoler or keeper of *Newgate*, under the said and , or either of them, from all charges, and damages whatsoever, relating to the said office of gaoler, as herein is mentioned,—*They* they the said and do severally covenant, promise, and grant by these presents, and each of them, their, and each, and every of their executors, and administrators, to and with the said *Richard Akerman*, his executors, and administrators, that they the said and shall and will allow unto the said *Richard Akerman*, to and for his own use, all the just and lawful profits, benefits, commodities, advantages, fees, and perquisites, as shall be received by the said *Richard Akerman*, by virtue of his said office, during so long time as he shall be continued therein, under them the said and , or either of them;—*And*, in consideration of the premises, and for other good causes and considerations, him, the said *Richard Akerman*, thereunto moving, he the said *Richard Akerman*, for himself, his executors, and administrators, and for every of them, doth covenant, promise, and grant, to and with the said and , their executors and administrators, by these presents, that he, the said *Richard Akerman*, shall well, truly, duly, honestly, and sufficiently, during so long as the said and or either of them shall continue in the said office of sheriffs of *London*, or sheriff of *Middlesex*, and shall think fit to continue the said *Richard Akerman* in the office of gaoler or keeper of *Newgate*) execute and perform the same, and carefully, well, truly and honestly demean and behave himself therein, and in all matters and things whatsoever thereto relating, without committing any extortion, or accepting any unlawful bribes, fees or rewards, either by himself his agent or agents, deputy or deputies, servant or servants, or any otherwise,—*In trust* for him or for his use:—*And also* that he the said *Richard Akerman*, or his deputy or deputies, agent or agents, shall and will from time to time, and at all times from henceforth, during his the said *Richard Akerman's* being continued in the said office of gaoler by the said and , stand

, stand and be charged with all and every the prisoner and prisoners as is and are now remaining and being in, or belonging to the said gaol of *Newgate*:—*And likewise* that the said *Richard Akerman*, or his agent, shall also from time to time, and at all times from henceforth, during the said *Richard Akerman's*, being continued in the said office, by the said and receive and take into his custody, and for safe keeping in the said gaol, all and every prisoner and prisoners who shall be from time to time hereafter (during so long time as they the said and shall continue sheriffs of or for the said city of *London*, and sheriff of the county of *Middlesex*, and continue the said *Richard Akerman* in the said office) brought, committed, or sent to the said gaol, or the custody of the said and or either of them, by virtue of any writ or writs, process or processes, mandate or mandates, warrant or warrants, by any person or persons whosoever having a lawful authority or power for that purpose;—*And* the said prisoner or prisoners as shall be so brought committed, or sent as aforesaid, all the prisoner and prisoners now being and remaining in the said gaol of *Newgate*, shall and will well and truly, by himself, his deputy or deputies, keep safe and imprisoned, according to the tenor, purport, and effect of the warrants, precepts, or commandments, writs or authority by virtue of which he, she, or they or any of them shall be or stand committed, charged, or imprisoned, until such prisoner or prisoners shall be delivered by due course of law, or set free and at liberty with the allowance of the said and or their under-sheriff, or delivered over to the next succeeding sheriffs or sheriff upon the expiration of the sherialty of the said and *And also* that the said *Richard Akerman*, his deputy or deputies, agent or agents, servant or servants shall not, nor will permit or suffer any prisoner or prisoners whomsoever to be delivered out of the said gaol or prison, unless by due course of law, without a liberate or some other sufficient warrant from the said and or their under-sheriff, deputy or deputies under-seal of the office first had and obtained.—*And further* that he the said *Richard Akerman*, his heirs, executors or administrators, shall and will, at all times hereafter, acquit and discharge, or otherwise well and sufficiently save, keep harmless, and indemnify the said and , and each of them, their and each of their heirs, executors, and administrators, and their and each of their goods and chattels, lands, tenements and estate, of, from and against all, and all manner of action and actions, cause and causes of action, suits, payments, damages,

mages, expences, fines, amerciaments, pains, sum and sums of money, penalties, contempts, forfeitures, judgments, executions, damages, costs and losses, and of and from all and every other troubles, charges and incumbrances whatsoever, that shall or may happen, arise or grow, or be put unto, or assessed, imposed, laid, rated, set, or taxed upon, or brought against them the said and , or either of them, their or either of their heirs, executors, or administrators, or their, or either of their goods, chattels, lands, or tenements, for or by reason of any escape or escapes, or letting any prisoner or prisoners, voluntarily or negligently, or otherwise, to go at large or escape, or for or by reason of any act, default, negligence, misbehaviour, mis-feazance, or mis-feazances, abuses, misdemeanors, commission or commissions, omission or omissions, default, delay, or contempt, or for or by reason of any matter, cause or thing that should or ought at any time, in any kind whatsoever, to be done or performed by the said *Richard Akerman*, as gaoler or keeper of the said prison of *Newgate*, or by any of his deputy or deputies, clerk or clerks, agent or agents, officers, or ministers, servant or servants, or for or by reason of his or their not doing, insufficient doing, over doing, or neglecting his or their duty or duties, or returning, misreturning, or the not due returning, or executing any writ or writs, warrant or warrants, precept or precepts, mandate or mandates, or for or in respect of any matter or cause, or thing whatsoever hereafter to be done, or omitted to be done by him, them, or either of them, concerning the said office of gaoler or keeper of *Newgate*, or for or in respect of any demands or duties due or payable, by the gaoler of the said gaol, to the judges or clerks of the assize, or clerk of the peace, judges servants, or other officers or persons whatsoever, or for or by reason of the non-attendance of the said *Richard Akerman*, as gaoler or keeper of the said gaol, in any of the courts of judicature, or before any of the judges, justices of peace, and officers having a legal authority to require his attendance, or for or by reason of the non-observance, or non-obeyance of the commands of the several courts of our sovereign lord the king, his heirs, and successors, before the said and , as sheriffs of *London*, and sheriff of *Middlesex*, held or to be held; or the not duly executing the said office of keeper of the said gaol of *Newgate*, or any ways relating thereunto, or for or by reason of any matter, or thing whatsoever in any wise concerning the said office of gaoler of *Newgate*, or the execution thereof, and that without any trouble, costs, charges, damages, or expences therefore to be sustained, incurred, or expended by the said and , or either of them, their, or either

either of their heirs, executors, or administrators, in, about, for, touching, or concerning the same, *And further* that he the said *Richard Akerman* shall and will from time to time, and at all times from henceforth, during all the time that he shall continue in the said office of gaoler under the said and , make and keep a just, exact, true, and perfect account or calendar in writing, containing as well all and every the name and names of all and every the prisoner and prisoners who now is and are, from time to time, from henceforth hereafter during the sherrivalty of the said and , and his the said *Richard Akerman's* continuance in the said office under them, shall be committed prisoner or prisoners to the said gaol of *Newgate*, as also of all and every the several cause and causes of the commitments and imprisonments of all and every such person and persons, and the time when committed, and by whom : *And likewise* that the said *Richard Akerman*, his agent or agents, shall and will from time to time and at all times during the sherrivalty of the said and , deliver unto them the said and , and to all and every such person and persons as the said and , or either of them, shall from time to time direct, and when and where, and as often from time to time as thereunto required, true and fair copies in writing of any such calendar and calendars : *And also* that the said *Richard Akerman* shall and will from time to time, and at all times from henceforth, during his continuance in the said office, be truly diligent, attending, assisting, and aiding unto the said and and their secondaries, under-sheriff or under-sheriffs, in all affairs and business whatsoever, where-with the said and is, are, or shall be charged or employed, in or about the keeping of the said gaol or prison of *Newgate* : *And also* that he the said *Richard Akerman* shall and will freely remove, carry, and convey all manner of prisoner and prisoners, as well at the time of the sessions of oyer and terminer, and gaol delivery for the said city of *London* and county of *Middlesex*, as also at all other times ; and to such place or places, and to and before such court and courts, person and persons, and at and by such time and times as the said and , or their under-sheriff or under-sheriffs, shall be charged or required, by any legal process or authority, to convey, carry, and remove such prisoner or prisoners ; and lay out and expend all monies, whatsoever, as shall be occasioned thereby ; and the same prisoner and prisoners shall, from time to time, during the term aforesaid, safely remove and carry back again to the said gaol

gaol of *Newgate*, unless he, she, or they shall be removed or delivered out of the custody of the said _____ and

by due course of law (all such allowance and allowances as shall be made, given, allowed, or paid by and from the Exchequer or elsewhere, that hath or have been usually paid by the secondaries of the *Poultry* and *Wood-Street* compters, *London*, to the under-sheriff of *Middlesex*, or any or either of them, for the removing, carrying or re-carrying such prisoner or prisoners, being permitted to be had and taken by the said *Richard Akerman* for his own use). And likewise that he, the said *Richard Akerman*, shall and will, at his own proper costs and charges, find and provide, during the time he shall so continue in his said office, under the said

and _____, as well all such bedding, furniture and other things, for the use of the said gaol of *Newgate*, as shall be requisite and necessary for the said

and _____ to find and provide, or cause to be found and provided, or as they are by law, custom, or usage obliged to find and provide for the same, and also all and every such irons, links, locks, keys, bolts, manacles, handcuffs, and other cuffs, and all kinds of fetters, and other utensils and things as shall be necessary to be used or as there shall be occasion to be made use of in and about the said gaol, for the benefit, security, and confinement of the person and persons who now are or shall be, during the sheriffalty of the said

and _____, and his the said *Richard Akerman* being continued keeper of the said gaol of *Newgate*, by the said _____ and _____, committed prisoners to the said gaol, to prevent their making any escapes. *Provided always*, and it is hereby declared and agreed by and between the said parties hereto, that it is the true intent, and meaning, and agreement of them, and of these presents, that it shall and may be lawful to and for the said _____ and

_____, or either of them, at any time or times during their and either of their continuance in the said offices or office, at their, any, or either of their free will and pleasure, and without giving or shewing, or being compellable to give or shew to him the said *Richard Akerman*, or to any other person or persons whatsoever, or to any court or courts at law or other judicature whatsoever any cause or reason for their or either of their so doing, absolutely to displace, or remove the said *Richard Akerman* out of the said place or office of keeper or gaoler of the said gaol of *Newgate* aforesaid, for and during all the residue of the said term as shall be then to come of their sheriffalty, any thing in these present indentures contained, or any other matter whatsoever to the contrary thereof in any wise notwithstanding. And the said *Richard Akerman*, for himself,

his

his heirs, executors, and administrators, and every of them doth further covenant, promise, and agree to and with the said and , their executors, and administrators by these presents, that in case of such displacing or removing of him the said *Richard Akerman* as aforesaid, he the said *Richard Akerman*, after his being so displaced or removed, shall not, nor will act as gaoler of the said gaol of *Newgate* in anywise howsoever, during the shervalty of the said and . And also that the said *Richard Akerman*, his executors or administrators, in case of such removal of him the said *Richard Akerman* out of and from the said office, shall and will, within the space of three days then next ensuing, deliver over, or cause to be delivered over unto the said and , or one of them, their or one of their executors, administrators, or assigns, or such person or persons as they, or either of them, shall depute, the possession of the said gaol, and all the prisoners therein, and all, and all manner of books, papers, and other things whatsoever, relating, or that have related, to the said office since the said *Richard Akerman* shall have acted therein, by virtue of these presents, whole, safe, and in good order. and without alteration, razures, or obliterations to be made therein after such the determination of the will of the said and , or either of them as to the said office of gaoler, pursuant to the said power thereby reserved. In witness, &c.

Bond for executing Gaolership.

Obligation from *R. A.* to *C. A.* and *R. G.* Penalty 2000*l.*

THE Condition, &c. That if the above bounden *R. A.* gaoler to the said *C. A.* and *R. G.* sheriff of the county of *M.* do from time to time receive and take into his ward and custody within the gaol in the county of *M.* aforesaid, all such person and persons, prisoner and prisoners, which shall be committed or sent to the said gaol, or any committed to the ward and custody of the said gaoler by the said sheriff or his deputy, or by any justice or justices of the peace, or by any other having lawful authority to commit persons or prisoners to the said gaol, and the said persons and prisoners, so committed as aforesaid, do well and truly, duly and sufficiently, by his own proper person, or by his sufficient deputy or deputies, so keep, that the said *C. A.* and *R. G.* and each of them, their and each of their heirs, executors, lands, tenements, goods and chattels be saved harmless from all losses, penalties, amerciaments and damages whatsoever, as well against our lord the king, as also

against all other person and persons of, for and concerning the custody and keeping of the said gaol, and prisoners; and likewise do discharge, save, and keep harmless the said *C. A.* and *R. G.* and each of them, their and each of their heirs, executors, lands, tenements, goods and chattels, from time to time, and at all times hereafter, as well of convict persons, reprieves and felons, as of all other persons now committed for any contempts, condemnations, trespasses or misdemeanors, which may happen or chance hereafter to be committed to the said gaol for any of the causes aforesaid, during the time the said *C. A.* and *R. G.* or either of them shall be sheriff of the county of *M.* and likewise the said *R. A.* or any other by his consent, privity or appointment, in anywise let to bail or mainprize any prisoner or prisoners to him committed as aforesaid, not bailable by the law of the nation, without the special commandment or appointment of the said sheriff; and if the said *R. A.* or his sufficient deputy be ready to give his attendance upon the said sheriff and his deputy at all times necessary and convenient, and all and every thing and things that he shall be required to do by the said sheriff or his deputy, touching or concerning the affairs or business wherewith the said sheriff is or shall be charged or employed in or about the keeping of the said gaol or prison: *That* then this obligation to be void, otherwise to be in full force and effect.

Deputation to take an Inquisition.

Oxon, *G. K.* esquire, sheriff of the county aforesaid, to wit, *C. K.* gentleman, greeting: By virtue of a writ of enquiry issued out of his majesty's court of *King's Bench* at *Westminster*, to me directed, and hereunto annexed, I do hereby authorise and empower you to summon a jury, and take an inquisition in my name, in a cause wherein *G. H.* is plaintiff, and *J. K.* is the defendant, and render me an account of what you shall do therein: so that I may certify the same to our sovereign lord the king at *Westminster*, on the next after
Hereof fail not. Given under the seal of my office, the day of 1786.

This deputation to be endorsed and returned with the inquisition. } By the same sheriff.

Deputation to grant Replevins.

Oxfordshire, *A. B.* esquire, sheriff of the county aforesaid, to wit, to *A. C.* gentleman: I do hereby appoint you one of my deputies for making or granting replevins within the

the said county, pursuant to the statute in that case made and provided; and for your so doing, this shall be your sufficient authority. Given under the seal of my office, the day of 1786. By the same sheriff.

Assignment of a Lease.

TO all to whom these presents shall come: I *W. A.* esquire, sheriff of the county of send greeting: Whereas by virtue of his majesty's writ of *fiery facias* unto me directed, commanding me that I should cause to be made of the goods and chattels in my bailiwick of *T. M.* as well a certain debt of 2000 *l.* which *J. T.* esq, had recovered against him in his majesty's court before the king himself at *Westminster*, as also 63 *s.* which in his majesty's same court were awarded to the said *J.* as well for his damages which he sustained by reason of the detaining the said debt, as for his costs and charges by him about his suit in that behalf expended, and that I should have that money before the king at *Westminster*, on next after , to render to the said *J.* for the debt and damages aforesaid, whereof the said *T.* was convicted; and whereas by virtue of the said writ, I, the said sheriff, took the within written indenture of lease in execution, and on the day of last past, sold the same by publick auction, to *S. R.* of, &c. mercer, (being the best bidder) at and for the price or sum of 70 *l.* Now know ye, that I, the said *W. A.* sheriff as aforesaid, for and in consideration of the said sum of 70 *l.* of lawful money of *Great Britain*, to me in hand paid by the said *S. R.* at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have bargained, sold and assigned, and by these presents do bargain, sell and assign, unto the said *S. R.* the said within written indenture of lease, and all my estate, right, title, and interest therein. In witness, &c.

Bail Bond.

KNOW all men by these presents, that we *J. F.* of, &c. *G. H.* of, &c. and *I. K.* of, &c. are held and firmly bound to *Thomas Fenn*, esquire, sheriff of the county of *O.* in 40 *l.* of lawful money of *Great Britain*, to be paid to the said sheriff, or his certain attorney, executors, administrators, or assigns, for which payment to be well and faithfully made, we bind ourselves, and each of us by himself, for the whole and every part thereof, and the heirs, executors, and administrators, of us, and every of

of us, firmly by these presents, sealed with our seals, dated this day of in the 26th year of the reign of our sovereign lord George the third, by the grace of God, of *Great Britain, France and Ireland*, king, defender of the faith, &c. and in the year of our Lord 1786.

The condition of this obligation is such, that if the above bounden *J. F.* do appear before the king, at *Westminster*, on *Monday next, after the Morrow of All Souls*, to answer *Richard Roe*, in a plea of trespass, and also to a bill of the said *Richard*, to be exhibited against the said *J. F.* for 40*l.* on promise, then this obligation to be void, and of no force, otherwise to stand and remain in full force, vigor, and effect.

Sealed and delivered in

the presence of }

In the condition of these bonds, pursue the substance of the writ, such as "*the day of the return, and when to appear, as also to answer the plaintiff in his plea.*"

Assignment of a Bail Bond, Vide fo. 128.

KNOW all men by these presents, that I *A. B.* esquire, sheriff of the county of *Oxford*, within named, have at the request of *A. B.* the plaintiff, also within named, assigned to him the said plaintiff, the within written bail-bond, pursuant to the statute in such case made and provided. In witness whereof I have hereunto set my hand and seal of office, this day of within the year of our Lord 1786.

If the sheriff goes out of office, and he is afterwards to assign the bond, then call him "*late sheriff.*"

The sheriff usually takes an indemnity from the plaintiff, or his attorney, the charge is 5*s.* in town, 6*s.* 8*d.* country, but I do not find the necessity of indemnifying, nor are they bound to do it, for the act directs the assignment to be made.

Receipt for a Bail Bond.

I Do hereby acknowledge to have had and received of and from *R. C.* esquire, sheriff of the county of *Berks*, the bail-bond, for the appearance of *E. M.* before the justices of his majesty's court of *Common Pleas*, at *Westminster*, (*the return*) to answer to *J. H.* in a plea of trespass on the case in the penalty of 100*l.* and dated the 19th of *June* last past, together with an assignment thereon indorsed pursuant to the statute in such case made and provided; And in consideration thereof, I do hereby promise to save harmless and indemnify the said sheriff of and from all actions, suits, amercements and costs whatsoever, relating

ating to the said cause, bail-bond, or assignment thereof, as witness my hand.

Bond of Indemnity to Sheriff for Payment of Money under a fieri facias.

BOND from *A. B. C. D.* and *E. F.* of, &c. to *H. D.* Esquire, sheriff of the county of _____ in the penal sum of 500*l.* Whereas by virtue of his majesty's writ of *feri facias*, directed unto the above named sheriff, commanding him, that he should cause to be made of the goods and chattels of *C. B.* in his bailiwick, as well a certain debt of 200*l.* which the above bounden *A. B.* had recovered against him, in his majesty's court before the king himself, as also 63*s.* which in his majesty's same court was awarded to the above-bounden *A. B.* as well for his damages, which he sustained by reason of the detaining the said debt, as for his costs and charges by him, about his suit in that behalf expended, and that the said sheriff should have that money before the king at *Westminster*, on *Monday* next, after the *Morrow of All Souls* last past, to render to the above bounden *A. B.* for the debt and damages aforesaid, whereof the said *C. B.* was convicted: And whereas, by virtue of the said writ, the abovesaid sheriff hath taken goods and chattels, of the said *C. B.* and sold the same for the sum of 100*l.* being the best price he could get for the same. And the above bounden *A. B.* hath applied to and requested of the said sheriff to pay him the monies so levied, on being properly indemnified, which the said sheriff hath agreed to do. Now the condition of this obligation is such, that if the said *A. B. C. D.* and *E. F.* their and each of their heirs, executors, and administrators, save harmless, and keep indemnified him the said sheriff, his under-sheriff, bailiffs, and officers, of from and against all manner of action and actions, suit and suits, either at law or in equity, brought or to be brought against them or either of them, for or by reason of the levy or payment of the said sum of 100*l.* to the above bounden *A. B.* and also of from and against all costs, charges, damages, and expences, they or either of them, may be put to, for or on account thereof, then this obligation to be void, otherwise to be and remain in full force, strength and effect.

Bargain

Bargain and Sale by Sheriff.

TO all to whom these presents shall come, I C. D. of, &c. esquire, sheriff of the county of _____ send greeting, whereas by virtue of his majesty's writ of *fiery facias* unto me directed, commanding me, &c. (here recite to the end of the *fiery facias*. (as by the said writ of *fiery facias*, relation being thereunto had will more fully and at large appear.) *Now know all men* by these presents, that I the said sheriff, for and in consideration of the sum of 100*l.* of lawful money of *Great Britain*, to me in hand paid by C. K. of, &c. esquire, at and before the sealing and delivery hereof, the receipt whereof I do hereby acknowledge, have bargained and sold, and by these presents, do bargain and sell unto the said C. K. all and singular the goods and chattels following, by me taken in execution by virtue of the said writ of *fiery facias*, (that is to say,) one chest of drawers, one feather bed, (*here set forth the inventory of the goods*;) all which said goods, and chattels, I the said sheriff, at the sealing and delivery hereof, have delivered to the said C. K. to have and to hold the same unto the said C. K. his executors, administrators, and assigns, as his and their own proper goods, and chattels, to his and their own use and benefit for ever. In witness whereof I the said sheriff, have hereunto set my hand and seal of office, this day of _____ in the 26th year of the reign of, &c. and in the year of our Lord 1786.



F I N I S.

